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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 667

WILLIAM SMITH, JR., PETITIONER

vs.

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

PETITION FOR CERTIORARI FILED AUGUST 16, 1938
CERTIORARI GRANTED NOVEMBER 21, 1938

Supreme Court of the United States

OCTOBER TERM, 1962

No. 667

WILLIAM SMITH, JR., PETITIONER

vs.

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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[fol. 2]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

THE STATE OF MISSISSIPPI,
Madison County

September Term, A. D., 1961

INDICTMENT—Filed Sept. 20, 1961

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful men of Madison County, in the State of Mississippi, elected, impaneled, sworn, and charged to inquire in and for said County and State aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present: That William Smith, Jr., in said County and State on the 29th day of July, A. D., 1961 Wilfully, unlawfully, and feloniously forcibly ravish and carnally know Nerine Elise Gober, a female person, over the age of 12 years, and without her consent and against her will contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

WILLIAM L. WALLER
District Attorney

[File Endorsement Omitted]

[fol. 3]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

ORDER RE TRANSFER OF PETITIONER—July 31, 1961

This cause this day came on for hearing on oral motion of Bill Waller, District Attorney in and for the 7th Circuit Court District of the State of Mississippi, for the removal of the defendant, William Smith, Jr., from the jail in and for Madison County, Mississippi, to the county jail in and for the First Judicial District of Hinds County, Mississippi, and in support of said motion presented evidence to show that the facilities of the county fail in Madison County aforesaid are inadequate for the safekeeping of the defendant and the Court having heard said motion and evidence finds that the motion is well taken.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant, William Smith, Jr., is to be, and he is hereby ordered to be removed from the county jail, Canton, Madison County, Mississippi, and removed to and held in custody in the county jail in and for the First Judicial District, Hinds County, Mississippi, pending further action of this Court.

ORDERED AND ADJUDGED, this the 31st day of July, 1961.

LEON F. HENDRICK
Circuit Judge

[File Endorsement Omitted]

[fol. 4] * * *

[fol. 5]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

ORDER RE SPECIAL VENIRE—Sept. 22, 1961

This cause was set for call on September 22nd, 1961, the same being the first Friday of the regular September 1961 term of this Court, and the defendant and his attorney were present in open court and the Court was advised by the district attorney that the State was ready for trial on Monday, September 25th, 1961, and the Defendant announced through his attorney, in open Court, that he was ready for trial on said date and then the defendant requested that a special venire be drawn for the trial of this case, whereupon the Court in the presence of the defendant and his attorney drew sixty names on the special venire for the trial of this case.

It is, therefore, ordered and adjudged that a special venire composed of sixty names be drawn in this cause returnable on the 25th day of September, 1961 at 9 A. M. pursuant to the request of the defendant. Ordered and adjudged this 22nd day of September, 1961.

LEON F. HENDRICK
Circuit Judge

[File Endorsement Omitted]

[fol. 6]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

INSTRUCTIONS FOR THE STATE

Instruction for the State No. 1

The Court instructs the jury for the State that if you believe from the evidence in this case beyond a reasonable doubt that the defendant, William Smith, Jr., on or about July 29, 1961, in Madison County, Mississippi, did then and there wilfully, unlawfully, forcibly and feloniously assault Nerene Elise Gober, a female person over the age of 12 years and did, then and there put her in fear of great personal violence, and that thereafter at said time and place the said William Smith, Jr., did violently, forcibly and feloniously and against her will, revish and carnally know the said Nerene Elise Gober, then it is your sworn duty to find the Defendant William Smith, Jr., guilty.

GIVEN

[File Endorsement Omitted]

[fol. 7]

* * * *

Instruction for the State No. 2

The court instructs the jury for the State that you do not have to actually know that the Defendant is guilty of the crime charged before you may convict him, and that you should not hesitate to find that he is guilty because you are able to say, outside of the evidence, that he might have been innocent; but after carefully considering all of the evidence in this case, if you believe beyond every reasonable doubt that he is guilty, then it is your sworn duty to so find him guilty.

GIVEN

* * * *

[fol. 8]

Instructions for State No. 3

The court instructs the jury that in the event you find the Defendant guilty you may return one of the following verdicts:

"We the jury, find the Defendant Guilty as charged;"

Whereupon the Court shall sentence the Defendant to suffer death.

The Court further instructs the jury that if you believe from the evidence in this case beyond a reasonable doubt that the Defendant is guilty as charged in the manner and form aforesaid, then the form of your verdict may be:

"We, the jury, find the Defendant guilty as charged and direct that he be imprisoned in the State Penitentiary for the period of his natural life."

If the verdict of the jury should be in this form, the Court will direct that the Defendant be imprisoned in the State Penitentiary for the period of his natural life.

The Court further instructs the jury, however, that if they believe from the evidence in this case, beyond a reasonable doubt, that the Defendant is guilty as charged in the indictment, but the jury cannot agree upon his punishment, they should not on that account, withhold their verdict, but should certify to the Court the following verdict, to-wit:

"We, the jury, find the Defendant guilty as charged in the indictment, but cannot agree on his punishment," [fol. 9] whereupon the Court will direct that the Defendant be imprisoned in the State Penitentiary for the period of his natural life.

GIVEN

[fol. 10]

IN THE CIRCUIT COURT OF MADISON COUNTY

[Title Omitted]

INSTRUCTIONS FOR THE DEFENDANT

Instruction No. 1

The court instructs the jury for the defendant that the law starts our with the presumption that the defendant is entirely innocent of the crime charged against him and every part and parcel of it; that this presumption of the innocence of the defendant is no mere fiction, but is evidence in his favor and that this presumption accompanies the defendant as a shield, through out every step and stay of a trial, and it in itself sufficient to find the defendant not guilty, unless it has been broken down, over come and shattered by competent and credible testimony, satisfying the minds and consciences of a jury of the guilt of the defendant beyond every reasonable doubt and to a moral certainty. It is not sufficient for the jury to believe that the defendant is probably guilty nor will a mere preponderance of the evidence, or the weight of any preponderant testimony, justify a conviction, but the jury must be satisfied from the evidence beyond a reasonable doubt and to a moral certainty that the defendant is guilty before they can convict.

GIVEN

[File Endorsement Omitted]

* * * *

[fol. 11] *Instruction No. 2*

The court instructs the jury for the defendant that if you believe from the evidence that the alleged confession was untrue you should disregard it or if you believe from the evidence that it was made under the influence of hope or fear, you may take this into account in determining what weight or credit, if any you may attach to it as evidence.

GIVEN

* * * *

* * * *

[fol. 12] *Instruction No. 3*

The court charges the jury for the state that each and every juror has the right to arrive at his own individual conclusion as to what verdict he desires to return, and after he has reached this conclusion, he has the further right to stick to such conclusion, even though all of his fellow jurymen may desagree with him; yet, the court further tells you that before you reach your final conclusion, that it is your sworn duty to thoroughly consider the law and the evidence in the case and to freely discuss the law and the evidence with your fellow jurymen, and to reach your conclusion after a thouough and consistent search for the truth as revealed by the law and the evidence, and upon this alone arrive at your conclusion and return a verdict accordingly.

GIVEN

* * * *

[fol. 13]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

No. 9330

STATE OF MISSISSIPPI

vs.

WILLIAM SMITH, JR.

VERDICT OF THE JURY—Filed September 25, 1961

WE THE JURY, FIND THE DEFENDANT GUILTY AS CHARGED

[File Endorsement Omitted]

[fol. 14]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

Case No. 9330

STATE OF MISSISSIPPI

vs.

WILLIAM SMITH, JR.

SENTENCE

COMES THE DISTRICT ATTORNEY WHO PROSECUTES FOR AND ON BEHALF OF THE STATE AND DEFENDANT WILLIAM SMITH, JR. IN HIS OWN PROPER PERSON, IN CUSTODY AND BY COUNSEL, BEING CALLED TO ANSWER A CHARGE OF RAPE, BEING ARRAIGNED UPON THE CHARGE IN THE INDICTMENT ENTERED A PLEA OF NOT GUILTY THERETO

THEREUPON CAME A JURY OF GOOD AND LAWFUL MEN, TO-WIT: ALFRED HARDY, JR. AND ELEVEN OTHERS WHO BEING DULY EMPANELLED, SWORN AND CHARGED TO WELL AND TRULY TRY THE ISSUE JOINED AND A TRUE VERDICT RENDER ACCORDING TO THE LAW AND THE EVIDENCE, AFTER HEARING ALL THE EVIDENCE AND ARGUMENTS OF COUNSEL, AND RECEIVING THE INSTRUCTIONS OF THE COURT, RETIRED AND PRESENTLY RETURNED INTO OPEN COURT THE FOLLOWING VERDICT TO-WIT: WE, THE JURY, FIND THE DEFENDANT GUILTY AS CHARGED.

IT IS THEREFORE ORDERED AND ADJUDGED THAT THE DEFENDANT FOR SUCH HIS OFFENSE OF WHICH HE HAS BEEN FOUND GUILTY, BE AND IS HEREBY SENTENCED TO DEATH IN THE MISSISSIPPI STATE GAS CHAMBER FRIDAY, NOVEMBER 3RD, 1961

[fol. 15]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

MOTION TO SET ASIDE VERDICT AND TO GRANT A NEW TRIAL—Filed September 27, 1961

Comes the defendant by his Attorney Jack M. Greaves, in the above styled and numbered cause and moves the court to set aside the verdict of the jury and to grant unto the defendant a new trial and assign the following reasons, to-wit:

1.

That learned judge erred in allowing the alleged confession of the defendant to be admitted as evidence in defendants trial.

2.

The jury found contrary to the law and evidence.

3.

The court erred in allowing the state to introduce various and sundry evidence over the objects of the defendant.

4.

For other causes to be shown at the hearing of this Motion.

JACK M. GREAVES
Jack M. Greaves Att'y for
Defendant

[File Endorsement Omitted]

[fol. 16]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

ORDER OVERRULING MOTION TO SET ASIDE VERDICT AND FOR A NEW TRIAL—September 27, 1961

This cause coming on to be heard on the motion of the defendant, William Smith, Jr, requesting the court to set aside the verdict of the jury and to grant him a new trial, and the court after considering the same is of the opinion that said motion should be over ruled.

It is therefore ordered and adjudged by the court that the above styled and numbered motion be, and the same is hereby over-ruled.

Ordered and adjudged this the 27th day of September, 1961.

LEON F. HENDRICK
Judge

[File Endorsement Omitted]

[fol. 17]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

AFFIDAVIT IN FORMA PAUPERIS—Filed September 27, 1961

STATE OF MISSISSIPPI

MADISON COUNTY

Personally appeared before me the undersigned authority in and for said state and county, William Smith, Jr., who, first being duly sworn on his oath states that he was tried and convicted in the Circuit Court of Madison County, Mississippi on the 25th day of September, 1961 on a charge of rape and was convicted and sentenced to die in the gas chamber on November the 3rd, 1961, from which judgment he is taking an appeal to the Supreme Court of the state of Mississippi. William Smith Jr. makes affidavit that by reason of his proverty he is unable to give bond for the payment of court cost as required by law; that he is also unable to obtain sureties on his appeal bond.

Sworn to and subscribed before me this the 27th day of September, 1961.

L. F. CAMPBELL
Clerk

[File Endorsement Omitted]

[fol. 18]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

No. 9330

STATE OF MISSISSIPPI

vs.

WILLIAM SMITH, JR.

STATEMENT OF EVIDENCE

APPEARANCES:

William L. Waller, District Attorney, Seventh Circuit District, Jackson, Mississippi

Joe R. Fancher, County Attorney, Madison County, Canton, Mississippi
Present and representing the State

Jack M. Greaves, Attorney, Canton, Mississippi
Present and representing the Defendant

RE IT REMEMBERED, that on, to wit, September 25, 1961, the same being of the days of the regular 1961 term of the Circuit Court in and for Madison County, Mississippi, in the Circuit Court room thereof, the above entitled cause came on for hearing before the HONORABLE LEON F. HENDRICK, Judge of the Seven Circuit Court District of the State of Mississippi, with a jury of twelve qualified electors, when and where the following proceedings were had and entered of record:

[fols. 19-22] • • •

[fol. 23] STATE OF MISSISSIPPI'S CASE

MR. BILLY NOBLE

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are sheriff Billy Noble of Madison County?

A. Yes, sir.

Q. You were the duly qualified and acting sheriff of Madison County on the 29th day of July 1961, were you not?

A. Yes, sir.

Q. I will ask you where you were around midnight on Saturday night, July 29th, 1961, sheriff?

A. On Saturday night, the 29th of July, Deputy Sheriff Stone and myself were in beat two around Flora. We stayed over there until approximately 2:30, at which time I returned to my home. We were in and out of the car most of the time and did not hear the call on the radio. When we got home I received this call from my wife who stated that this couple was at Mr. Craft's house on Finney Road and waiting there to see me. I proceeded to the Craft home where I talked to the two victims at which time they disclosed to me what had happened there on the road.

Q. Now, what's Mr. Craft's first name, do you recall?

A. Mr. Ed Craft.

Q. Does he live in Madison County?

A. Yes, sir, Madison County District 1.

Q. All right. How far does he live from— Where does [fol. 24] he live in reference to the court house, north, east, south, or west?

A. He lives north.

Q. All right, sir. Which side of highway 51?

A. He lived on a black top road called Finney Road, to the right hand side of highway 51.

Q. Did you go to the Craft home on Finney Road?

A. Yes, sir.

Q. What did you find when you got there?

A. Found the two victims.

Q. All right. Would you name them, please, sir?

A. Aleece Gober and James Myers.

Q. Would you tell the jury whether or not Aleece Gober is white?

A. She is a white, female.

Q. Now, approximately how old is she?

A. She's approximately fourteen years of age.

Q. And how old is James Myers, if you know?

A. He is approximately seventeen years of age.

Q. What time, approximately, was it that you arrived there?

A. I got there around 2:30.

Q. All right. Did you talk to James Myers and Aleece Gober at that time and place?

A. Yes, sir, I talked to them in the front yard of Mr. Craft's. They stated to me that they had gotten out of the car on this dirt road and were scared to go back to it. I proceeded down to the dirt road headed north where I located the car. I backed out and went back to the house [fol. 25] and put them in the car with me. I went back to the fork of the road at which point they stated to me that when the defendant got out of the car he took the car keys with him and told them he would leave the car keys to the car at the fork of the road. That he left the car, walking south, towards the Finney Road, at which point he broke and ran. We were parked at the intersection of the Finney Road and the dirt road where the attack occurred. I got out of the car and looked on the ground, at which point I located the keys to Myers' car in the fork of the road where they said the defendant was to leave them.

Q. Did you—could you describe by make and model the car that was parked in the road when you got down there?

A. 1959 two-tone blue, Ford automobile.

Q. And your investigation revealed that these two children, Aleece Gober and James Myers, had been riding in this car. Is that correct?

A. Yes, sir.

Q. And they had left it parked. Do you know how they got from the parked car to Mr. Craft's house?

A. They stated to me that they walked across the field. In other words, they got out of the car, they cut across the ditch and through the pasture up to Mr. Craft's house.

Q. Would you describe the appearance to the jury, Sheriff, of Aleece Gober at the time you saw her?

A. She was—had on a blouse and a pair of shorts. The blouse was bloody. She suffered a cut or lacerated hand. There was blood on her shirt where she stated that she had, you know, had placed her hand. Also on the shirt of [fol. 26] the Myers boy. Had a piece of cloth wrapped around the hand to stop the bleeding.

Q. Did you notice anything in particular about the Myers boy?

A. He suffered a, in other words, a knife mark on his throat.

Q. At that point what crime, if any, were you commencing an investigation of?

A. At that time I was with the assault.

Q. Assault. Are you talking about rape?

A. Yes, sir. She stated to me at the fork of the road . . . .

BY THE COURT:

I expect you had better not go into details about what so and so stated, Mr. Waller.

BY MR. WALLER: (continuing)

Q. What did you do after you recovered the car keys, sheriff?

A. I called on the radio for additional help, for the Canton police department to send Mr. Hill with his police dog to the scene. I also radioed the Hinds County sheriff's office to have them send the bloodhound up. Blocked the roads off at that point. And when Patrolman Hill arrived with his dog I placed him on the scent at the road where the car keys were left. He took the track and headed west and crossed the cotton field in direction of the sawmill quarters. I proceeded to the hospital with the Gober girl and the Myers boy, at which point I radioed to have a doctor there.

[fol. 27] Q. Did you take the two children to the hospital?

A. Yes, sir.

Q. At Canton?

A. Yes, sir.

Q. Do you know what doctor saw them?

A. Dr. C. H. Haywood.

Q. Saw them at the hospital?

A. At the hospital, yes, sir.

Q. Did he examine them immediately after you arrived there, is that correct?

A. Yes, sir, and also with the consent of the family.

Q. Did you later through your investigation examine the scene where this assault took place?

A. Yes, sir.

Q. Where was the scene located in reference to Mr. Craft's house and where the car was parked?

A. It's located north on the dirt road where the car was parked north of the house of Mr. Craft.

Q. Now, that dirt road runs north and south, does it not?

A. Yes, sir.

Q. Does it turn at any point north of where the car was parked?

A. The road runs north and south to the point where the car was parked where the scene of the crime was committed. Then the road turns and runs west—east and west—at that point and intersects into highway 51.

Q. Comes back to highway 51?

[fol. 28] A. Yes, sir.

Q. Describe the land surface area where this assault took place, sheriff.

BY MR. GREAVES:

I object to it unless somebody showed him, one of these, the girl or the boy showed him where it was, so it would be the exact spot.

BY THE COURT:

I sustain the objection to that.

BY MR. WALLER: (continuing)

Q. Did you take the Myers boy and the Gober girl with you when you went to the scene?

A. Took the Myers boy.

Q. Did he show you where it took place?

A. Yes.

Q. Did you find evidence there to corroborate the fact that something had happened there?

A. The Investigator Charley Snodgrass recovered the victim's pants.

Q. Was that her under pants?

A. Yes, sir.

Q. Were you present when those were recovered?

A. Yes, sir.

Q. And what was the ground area, what was there, grass, trees, or what?

A. A corn field.

Q. It was a corn field. Was it row corn? Was it rows made up?

A. Yes, sir.

[fol. 29] Q. Was the corn growing at that time, I mean, was it up high?

A. Yes, sir.

Q. All right. Was this in what direction from the dirt road, north or west or east or south?

A. It's located east.

Q. Approximately how far from the curve we talked about where the road turns west and goes back into highway 51.

A. It's just opposite the curve.

Q. All right. How many feet approximately from the roadway itself?

A. I would say approximately thirty or forty feet.

Q. Thirty or forty feet from the road?

A. Yes, sir.

Q. Now, did you accompany Officer Snodgrass on further investigation of this incident?

A. Yes, sir.

Q. I will ask you whether or not the defendant in this case, William Smith, Jr., sitting here in the court room, was arrested?

A. Yes, sir.

Q. I ask you whether or not you discussed this matter with him?

A. We talked to him that evening at the highway patrol headquarters in Jackson.

Q. Were you present at any time when he made any admission in your presence about the incident?

A. Yes, sir.

[fol. 30] Q. I will ask you to tell the jury what he said about it to you or in your presence, whether or not he did it?

A. He stated to me that . . . .

BY MR. GREAVES:

Let the jury retire, Judge, on that.

BY THE COURT:

All right. The jury may go to their room.

BY MR. WALLER:

Judge, could I have a word with you before that?

(After conference of the Court and the attorneys for both sides, the jury did not leave the court room.)

BY MR. WALLER: (continuing)

Q. What day was the defendant arrested, Sheriff Noble?

A. He was arrested on the morning of July 30th at his home.

Q. Now, in connection with his home, I will ask you whether or not you caused to be issued any particular type of legal document to go to his house or any permit?

A. Yes, sir, we issued a search warrant to search his house to recover the wallet taken from the person of James Myers.

Q. Did you recover anything that was the property of either one of these two people?

A. Yes, sir, we recovered the wrist watch taken from Myers. We recovered a knife that Smith claimed he used in the attack out of the wall where he said he had placed it. We recovered the clothing that he had on at the time

of the attack, minus a shirt he claimed he had but we never did recover it.

[fol. 31] Q. Did your investigation disclose how Smith was dressed that night?

A. Yes, sir.

Q. What did he have on?

A. He stated he had on a pair of khaki pants.

Q. All right. Did you recover those pants?

A. Yes, sir.

Q. Are they in the custody of your office at the present time?

A. Yes, sir.

Q. Did you recover—you testified, of course, that you recovered the knife?

A. Yes, sir.

Q. Is it in your custody at this time?

A. Yes, sir.

Q. And you testified you recovered a watch, the property of James Myers?

A. Yes, sir.

Q. What kind of a watch was that?

A. It's a Timex, 100, wrist watch, with a silver, stretch-type band.

Q. Would you tell the jury, Sheriff, where you recovered the knife within the house?

A. The knife was recovered in the middle bedroom out of the wall, had a hole in it between two partitions that he claimed that's where he placed the knife and also the wallet. We never did recover the wallet.

Q. You never recovered the wallet?

[fol. 32] A. No, sir.

Q. But you did find the knife in the wall where the defendant said it was?

A. Yes, sir.

Q. Did you have to remove a board or how did you get it?

A. Yes, sir, we had to take out part of a partition.

Q. Took out part of the wall?

A. Yes, sir.

Q. Did you discuss the findings with Dr. Haywood in the course of your investigation?

A. Yes, sir, he made his initial investigation or examination the morning of July the 30th. I requested of him a report as to his findings of which he mailed a copy to my office.

Q. Now, based upon all of the investigation that you conducted, the physical evidence which you recovered, I will ask you to tell this jury whether or not you discovered that a crime had been committed at that time and place?

A. Yes, sir.

Q. Did you?

A. Yes, sir.

Q. What crime was it?

A. That the victim, Aleece Gober, had been raped and the Myers boy had been robbed.

Q. I will ask you in particular reference to the corn field you spoke of before, opposite the curve in the dirt road that runs parallel to highway 51, I will ask you what county that is located in?

[fol. 33] A. It's in Beat 1, County of Madison, State of Mississippi.

Q. And is that the spot and the place where this assault took place according to your investigation?

A. Yes, sir.

Q. Sheriff, you spoke of the under pants which was recovered in your presence in the corn field shortly after you started your investigation?

A. Yes, sir.

Q. Did you determine who they belonged to?

A. Yes, sir.

Q. Who?

A. Aleece Gober.

Q. All right. Do you have those in your possession and custody at this time?

A. Yes, sir.

BY MR. WALLER:

The State would tender the witness at this time with the remark that we will call Sheriff Noble later, Your Honor.

BY THE COURT:

All right.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Mr. Sheriff, when you went to this man's house how did you happen to find the knife?

A. State the question again, please, sir.

Q. I asked you, when you got the writ to search Smith's house, how did you find the knife?

A. We had to tear the partition out of the wall. In [fol. 34] other words, it had a hole in the wall between the partition, it had a partition in between it. He stated that he had dropped the knife in the hole in the wall.

Q. What pressure did you put upon him to get him to show you where the knife was?

A. None.

Q. All you did, walked in and told him you were looking for a knife and a wallet and he just meekly and frankly turned it over to you?

A. No, sir, Mr. Jack. That was after he had confessed to the crime at the highway patrol headquarters. We asked him where the property was and he stated that the knife and the wallet and the watch were at his house, along with his clothes.. He stated further that the under pants and the under shirt that he had on at that time were the same that he had on at the scene.

Q. That's the way that you found it out?

A. Yes, sir, he told us that before we went to his house.

Q. That's all.

BY MR. WALLER:

It's agreeable now, as I understand the procedure, Your Honor, for the Sheriff to remain in the court room He will be a witness later on.

BY MR. GREAVES:

That will be agreeable.

BY THE COURT:

All right.

[fol. 35] ERNEST CRAFT

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are Ernest Craft?
A. Yes, sir.
Q. Do you live on the Finney Road, north of Canton, in Madison County?
A. Yes, sir.
Q. You have a farm up there, do you not, Mr. Craft?
A. Yes, sir.
Q. You live there on the farm in your home. Is that right?
A. Yes, sir.
Q. I ask you whether or not you were at home, along with your family, on Saturday night, July 29th, 1961?
A. Yes, sir, I was.
Q. I ask you whether or not any one came to your house after midnight that night?
A. Yes, sir.
Q. It would have been what date then?
A. Sunday morning.
Q. Then it actually would have been July the 30th?
A. Yes, sir.
Q. Do you now know a young man named James Myers?
A. Yes, sir.
Q. Did you prior to that night?
[fol. 36] A. No, sir.
Q. Do you now know a young lady named Aleece Gober?
A. Yes, sir.
Q. Did you know her prior to that night?
A. No, sir.
Q. I ask you whether or not, sir, on the night that we spoke of if these two young people came to your home?
A. Yes, sir.

Q. Approximately what time?
A. Around 2 o'clock.
Q. Were you asleep or awake at that time?
A. Asleep.
Q. Did they wake you up?
A. Yes, sir.
Q. Then what happened?
A. Well, they were hollering out at the road for help and . . .
Q. I can't hear you, sir.
A. They were hollering out at the road for help and I went to the front door and told them to come on up to the steps and I turned the light on to see who it was and saw that they were hurt. I asked them to come in. I called the sheriff and then I asked the boy if he wanted to call the doctor. He said "No" and said he wanted to call his mother. They did.
Q. As to the little girl, I want to ask you whether or not you noticed anything on her clothes at that time?
A. Well, she had . . . .

BY MR. GREAVES:

I object to his leading question, Your Honor.

[fol. 37] BY THE COURT:

I sustain the objection, on the ground it is leading.

BY MR. WALLER: (continuing)

Q. Mr. Craft, what color clothes, if you can remember, did the little girl have on?
A. She had on a white blouse and a dark skirt or shorts. I really don't know whether it was shorts or a skirt. It was dark.
Q. You asked them if they wanted you to call a doctor?
A. I did.
Q. Why did you ask them that?
A. Well, they had—she had blood on her blouse and her hand was cut.
Q. Did you notice—did you look at the hand yourself to tell more about the cut?

A. No, sir, she had it wrapped up in a rag, white cheesecloth.

Q. Did you see the blood?

A. Yes, sir.

Q. Did you notice anything else about her?

A. Well, she had dirt on her blouse and it was all rumpled up.

Q. You said they were out in the road hollering for help. Finney Road, what direction does it run?

A. It runs east and west.

Q. Is your house on the north or the south side of Finney Road?

[fol. 38] A. North.

Q. And how far is your house, the front door of your house from the Finney Road?

A. Probably seventy five feet.

Q. When you say they were in the road, what road do you mean?

A. In the Finney Road.

Q. All right. Is there a road that intersects with Finney Road anywhere near to your house?

A. A road that runs north and south about seven or eight hundred feet from my house, east of my house.

Q. East of your house. Is that a thru intersection or . . . .

A. It runs—comes on back out into 51.

Q. Does the road run south of Finney Road—when this dirt road hits Finney Road, does it go on across or does it end at Finney Road?

A. It ends at Finney Road.

Q. It ends at Finney Road?

A. Yes, sir.

Q. It runs north how far?

A. About a mile.

Q. Then what direction does it take?

A. West.

Q. All right. Where does it go then?

A. It goes down to 51.

Q. A the point where it turns west, do you know what the terrain there—what's growing on the land, if anything, on the east side of the road?

[fol. 39] A. Yes sir, there's a corn field on the east.

Q. Did you leave your house with these children that morning or not?

A. No.

Q. All right. Do you know whether or not Sheriff Noble came to talk to them that night?

A. Yes, sir, he did.

Q. Did you call the doctor or did Sheriff Noble call the doctor or do you know?

A. I don't know. I didn't.

Q. I believe that's all.

BY MR. GREAVES:

Stand aside.

BY THE COURT:

All right. Who do you want, Mr. Waller?

MR. JAMES MYERS

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. Talk out loud enough so we all can hear you.

Q. You are James Myers?

A. Yes, sir.

Q. M-y-e-r-s (spelling)

A. Yes, sir.

Q. Where do you go to school, James?

A. Canton High School.

Q. Canton High School?

[fol. 40] A. Yes, sir.

Q. What grade are you in?

A. 10th.

Q. You just atarted the 10th grade?

A. Yes, sir.

Q. How old are you?

A. 17.

Q. When were you seventeen?
A. January the 12th.
Q. Of this year?
A. Yes, sir.
Q. What's your father's name?
A. Jeff C. Myers.
Q. Do you live with your father and mother?
A. Yes, sir.
Q. Were you living with them back in July?
A. Yes, sir.
Q. What kind of car does your father own?
A. Sir?
Q. What kind of car does your father own?
A. '59 Ford.
Q. What color?
A. Blue and white.
Q. Do you know Aleece Gober?
A. Yes, sir.
Q. How long have you known her?
A. About two years.
Q. Do you all go to the same school together?
A. Yes, sir.
[fol. 41] Q. You live close together?
A. Yes, sir.
Q. I direct your attention to Saturday night, July 29th, 1961, and ask you whether or not you were with Aleece Gober on that night?
A. Yes, sir, I was.
Q. What time did you pick her up?
A. About 7 o'clock.
Q. 7 o'clock.
A. Yes, sir.
Q. Where did you all go then?
A. My mother, she was in the hospital. When I went and picked Aleece up we went down to see my mother in the hospital.
Q. Here in Canton?
A. Yes, sir.
Q. Were you driving your daddy's car?
A. Yes, sir.

Q. Same car that we were talking about?
A. Yes, sir.
Q. About how long did you stay in the hospital?
A. About an hour.
Q. What did you do then?
A. We left the hospital and we went back to our house and then when we left our house. We stayed at our house about thirty or forty five minutes. When we left our house we went to the N & W root beer stand.

BY THE COURT:

Speak a little louder, James.

A. Yes, sir.

[fol. 42] BY MR. WALLER:

Q. You went to the N. & W root beer stand?
A. Yes, sir.
Q. Did you stay there for awhile?
A. Yes, sir.
Q. Was there anybody else in the car with you at that time other than Aleece?
A. No, sir, but we talked to another boy and girl out there.
Q. Out at the root beer stand?
A. Yes, sir.
Q. Then what did you do when you left there?
A. We left the root beer stand, then we rode around uptown for a little while, then we went back out towards Finney Road out there.
Q. Do you now know where Ernest Craft lives?
A. Yes, sir.
Q. Did you pass his house on the way out there?
A. Yes, sir.
Q. What did you do after you passed his house—did you keep on the Finney Road or did you turn off?
A. No, sir, we turned off on a little road there and we parked there.
Q. All right. Did you turn north or south?
A. North.
Q. How far up the dirt road did you go before you parked?

A. About a quarter of a mile.

Q. Did you park on the—you were headed north, were [fol. 43] you not, in your daddy's car?

A. Yes, sir.

Q. Did you park on the left or the right side of the road?

A. Right.

Q. Right. That would be on the east side of the road?

A. Yes, sir.

Q. Did any cars pass while you were stopped there?

A. Yes, sir.

Q. Were they passing on the west of your car or the east side of your car?

A. West.

Q. Would you describe to the jury the road banks of that road, how they are laid out and what grows on them, if anything.

A. Well, there was a fence on the left hand side of the road and trees growed up along. I think that was Mr. Craft's land. And on the right it was bushes and grass and all like that.

Q. Now, after you stopped there, were you doing anything?

A. (No answer)

Q. Was there any noise in the car or not?

A. Yes, sir, we had the radio going. We turned the radio on. Just sat there talking and listening to the radio.

Q. You had the radio on. Now, you drove out there, of course, didn't you?

[fol. 44] A. Yes, sir.

Q. Were you or not, after you stopped, did you remain under the driver's seat?

A. No, sir, I got on the right hand side and Aleece got on the left.

Q. Were you sitting in the middle of the seat or were you on the side or how were you seated on the front seat right side?

A. I was on the side—on the right side, leaning up against the door. She was sitting in the middle of the seat.

Q. All right. Where was Aleece?

A. She was in the middle of the seat.

Q. You had the radio on?

A. Yes, sir.

Q. Then what happened?

A. Then I told Aleece, I said, "Aleece it's about time for us to go home."

Q. Did you smell anything about that time or not?

A. Yes, sir, after I said that I said, "Aleece, don't you smell whiskey?" And she said, "yes." I said, "I smell it." She said, "I do, too." About that time we heard something in the bushes over there. I said, "Aleece, didn't you hear something over there?" She said, "No, I didn't." So I didn't pay it no attention at that time. I just thought it was a dog or something over there.

Q. Then what happened.

A. About that time a negro came up to the car.

Q. What happened? Just tell the jury what happened.

[fol. 45] A. When he came up to the car?

Q. Which side?

A. To the right side.

Q. Is that the side you were seated on?

A. Yes, sir.

Q. Did he open the door or did he say anything or just what happened?

A. I was leaning up against the door and he run his hand through the window and put his hand on my mouth and then he opened the door and then he stuck a knife across there and told me to empty my pockets and give him everything I had.

Q. Did you do that?

A. Yes, sir.

Q. What did you give him?

A. I gave him my watch and my billfold. I didn't have no change. I just gave him my watch and billfold.

Q. What did he say to you, if anything?

A. Sir?

Q. Other than to give him all your money?

A. That's all he said at that moment.

Q. What kind of watch did you have?

A. Timex.

Q. What color?
A. Silver. Had a silver band on it.
Q. What kind of a band did it have on it?
A. Silver band.
Q. Did it stretch like this or not?
A. Yes, sir.
Q. Did you give it to him?
[fol. 46] A. Yes, sir.
Q. You gave him your wallet?
A. Yes, sir.
Q. What did he say then?
A. Well, he told Aleece to drive then. And she tried to drive but she couldn't. She can't drive a car and I tried to tell him that she couldn't drive a car and he said, "Shut up. Don't get smart." And I told him she couldn't drive and then he made me drive it.
Q. Was he in the car all the time?
A. Sir?
Q. Was he in the car all the time?
A. Yes, sir.
Q. And what was he doing then, when he told you to drive the car?
A. Well, he still had the knife at my throat. When he told me to drive the car, well, I switched over and he grabbed Aleece before I could get up. He put the knife to her throat and her arm around behind and I switched over. Then I got under the steering wheel and he told me to drive on up the road and I told him, "I am going to turn my lights on because I can't see." And I couldn't see and I was going all over the road and I had to drive slow because I couldn't see. And he reached over and he stomped my foot and we was going all over the road because I couldn't see where I was going. We were going so fast.
Q. Do you know about how far you went up the Finney Road, James?
A. About a mile—a mile and a half.
[fol. 47] Q. I am up the dirt road, pardon me. You were on the dirt road headed north. How far up that road did you go?

BY MR. GREAVES:

I object to him putting words in his mouth, if the Court please.

BY THE COURT:

I think that's all right, Mr. Greaves. He just asked him how far up that road. I overrule the objection to that particular question. Don't lead him or suggest to him, Mr. Waller. That's what Mr. Greaves is objecting to but I think that question is all right. I overrule the objection.

BY MR. WALLER: (continuing)

Q. Let's go back to the time you got under the wheel and you started the car. What did you do then?

A. He told me to crank the car up and drive on up the road.

Q. When you say up the road, what direction were you going then?

A. North.

Q. All right. How far north did you go?

A. About a mile.

Q. All right. Then what happened?

A. Then he told us to turn off on a little road right there—there's a silver gate there. I don't know who owns the land. We turned off right there. And then he told us to get out. So we got out.

Q. Wait just a minute. This dirt road that you went north on about a mile, does it turn in any direction?

A. Yes, sir, it turns back left.

[fol. 48] Q. Towards what?

A. 51 highway. It goes back into 51.

Q. Where in reference to that curve did you stop?

A. Right in the middle of the curve, we turned right.

Q. Right in the middle of the curve?

A. Yes, sir.

Q. Did you stop on the dirt road or did you pull off?

A. We pulled off the dirt road.

Q. All right. How far off of the dirt road did you pull?

A. It was about the length of the car.

Q. Length of the car. What was in front of your car when you stopped, if anything?

A. There was a big, silver looking gate.

Q. A gate?

A. Yes, sir.

Q. A pasture gate?

A. Yes, sir.

Q. All right. What did you do then?

A. Well, he told us to get out of the car then. We got out and then he told us to cross a barbed wire fence and go into that corn field.

Q. What did he say to you at any time prior to that, if he didn't do what he told you to?

BY MR. GREAVES:

I object to that.

BY THE COURT:

[fol. 49] I sustain the objection. That's leading and suggestive, Mr. Waller.

BY MR. WALLER: (continuing)

Q. As you all proceeded up the dirt road there, you were driving without your lights, as you testified?

A. Yes, sir.

Q. What, if anything, did the negro man say to you while you were driving along?

A. He didn't say nothing then.

Q. Did he tell you where to stop or did you pick that spot?

A. No, sir, he told me to turn off when we got there.

Q. When you stopped what did he say, if anything?

A. He told us to get out of the car.

Q. Where was he in reference to you—did he have hold of you or not or what was he doing?

A. I was under the steering wheel and he had hold of Aleece. He was on the right hand side. Aleece was in the middle.

Q. You spoke of the knife. Did he still have the knife or not?

A. Yes, sir, he had the knife up at Aleece's throat.

Q. He told you to get out, is that what you are saying?
A. Yes, sir.
Q. Did you get out?
[fol. 50] A. Yes, sir.
Q. Then what did you do?
A. Well, after he told us to get out, he told us to cross the barbed wire fence and when I went to cross it I fell or something. I twisted my foot. And he told us to go on out in the corn field.
Q. Where is the corn field located in reference to the dirt road?
A. It's right beside it.
Q. What side of the road is it on?
A. Right.
Q. Was that east or west, north or south?
A. East.
Q. East side of the road. About how far did you go in the corn patch?
A. About two hundred feet, something like that.
Q. In the corn patch and the corn patch is on the east side of this dirt road?
A. Yes, sir.
Q. All right. Now, would you tell the jury now whether you were in front of the negro man or behind him?
A. I was in front of him.
Q. Where was Aleece?
A. She was in between us.
Q. Did he have hold of either one of you?
A. Yes, sir. He had hold of Aleece and had the knife up to her throat.
Q. Did he say anything at that time?
[fol. 51] A. No, sir.
Q. Then what happened?
A. Then he told us to go on out there in the corn field. We went on out there. And he told me to lay down and put my face in the dirt and I laid down in the dirt, put my face down.
Q. You laid down in the dirt face down?
A. Yes, sir.
Q. Then what happened.

A. Then there was some talking going on or mumbling one. I couldn't understand what they were saying.

Q. Where was he and Aleece in reference to you? You were laying face down in the dirt and where they?

A. They were standing up at my feet.

(Whereupon Court recessed at 11:50 A.M., until 12:50 P.M., September 25, 1961.)

(Pursuant to the foregoing, Court reconvened at 12:50 P.M., September 25, 1961, when the following proceedings were had and done.)

(JAMES MYERS STILL ON THE WITNESS STAND ON DIRECT EXAMINATION)

BY MR. WALLER:

Q. James, we were up to the point where you were laying on your face in the corn field and they were standing at your feet. Just tell the jury in your own words what happened.

A. There was some mumbling going on and I couldn't understand what they were saying. And I heard him tell her to pull her pants off. When he told her that she ran over there and she grabbed me and I started to get up. He told me if I got up he would cut my throat. He [fol. 52] told me if I got up he would cut my throat so I didn't get up. And then he told her to pull her pants off. And then she pulled her pants off. Sh told him that she wasn't going to pull them off. For him to go ahead and kill her that she wouldn't pull them off. And he said, "If you don't, I will." So she went ahead and pulled them off. Then they laid down on the ground beside me.

Q. Did you have you face toward them or away from them?

A. Away from them.

Q. Were they laying beside you or how?

A. They were laying down beside me.

Q. Could you touch them or not?

A. Yes, sir, I could reach out with my arm and touch them.

Q. Then what happened?

A. Then he laid down on top of her. I felt something kicking down there at my foot. I turned around and looked. It was his foot. He was up on top of her.

Q. Did he say anything.

A. No, sir.

Q. How was she laying on the ground?

A. She was laying down flat on her back.

Q. How was he laying?

A. He was up on top of her.

Q. Do you know where the knife was at that time?

A. No, sir, I don't but I think, I'm not sure. He said something to her. I couldn't understand what he said. And she said, "No, you are not." And that's when he [fol. 53] cut her hand.

Q. Would you repeat that again—he said something to her?

A. Yes, sir.

Q. And what did she say?

A. She said, "No, you're not." That's when he cut her hand, when he cut her fingers.

Q. Cut her hand?

A. Yes, sir.

Q. Did he say anything else at that time?

A. Yes, sir, he told her he was going to fuck her until she couldn't stand it no more. And about that time he told us to get up. And then he told us to go get back in the car. So went and got back in the car. And he told us to put our heads down on the floorboard. So we put our heads down on the floorboard and then he asked me did I have a pistol. And I told him, "No, I didn't." He called me a liar. He said I was lying, I did have one. So he searched the car and he asked Aleece did she have one. And she told him, "No" she didn't. He looked in her purse anyway. Then we left. I can't tell you where we went, because we had our heads on the floorboard. We couldn't see where we were going.

Q. Let's go back to the corn patch. You say he was on top of her?

A. Yes, sir.

Q. Was he moving or not?

A. Yes, sir.

Q. Could you tell what else he was doing?

A. No, sir.

[fol. 54] Q. What was Aleece doing?

A. She was grunting and screaming, hollering, and begging him not to and he was telling her to shut up.

Q. How long were they in that position?

A. About thirty minutes.

Q. You got back in the car and you say he made you lay down on the floorboard?

A. No, sir, he made us put our heads down on the floorboard.

Q. In the front seat?

A. Yes, sir.

Q. Then what happened?

A. He backed out and we went somewhere. We went about half a mile, I guess, because he turned around and carried us back where we were when he jumped. Then he told us that he was going to leave us there. When he got out he told us we better not get up, that he would be watching us. There was some gravel or something there. You could hear him walking and then all of a sudden you could hear him take off running. And he said he would leave the keys in the fork of the road there.

Q. He told you he would leave the keys in the fork of the road?

A. Yes, sir.

Q. After he left, what did you all do?

A. I told Aleece, I told her we had better get out of there. So we got out and went across Mr. Craft's field and went up to his house and woke them up and used the telephone, and he called Mr. Noble.

Q. Where did you go when you left Mr. Craft's house?

[fol. 55] A. We was in the car with Mr. Noble.

Q. Where did you go then?

A. We went to the hospital. Then from the hospital he carried me on down to the police station.

Q. Your witness.

CROSS EXAMINATION

BY MR. GREAVES:

Q. What time of night did this occurrence take place?
A. Would you repeat that, please?
Q. About what time of night was this that you got in this trouble?
A. About 12.
Q. About 12 o'clock. Wasn't that a little late for you to be out with a young lady?
A. Yes, it was.
Q. You all were parked in a lover's lane, weren't you?
A. Sir?
Q. You were parked in a kinda lover's lane—had your car parked, didn't you?
A. Yes, sir.
Q. It was around 12 o'clock at night?
A. Yes, sir.
Q. You were out there. I believe that's all I want to ask him.

BY MR. WALLER:

Stand aside.

[fol. 56] BY MR. WALLER:

The State calls Aleece Gober.

BY THE COURT:

This young lady has been called, Aleece Gober. I am going to do that which I have authority to do, that is, to clear the court room while she is testifying. I want everybody to get out of the court room except the officers. And if there any any newspaper people in here, they can stay. The witness and the young lady's family can stay. The rest of you can go outside of the court room. If this boy's close relatives are here I will let them stay. I don't know whether he is married or not. His wife or his mother or both may stay in the court room.

MISS ALEECE GOBER

after having been first duly sworn was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are Aleece Gober?
A. Yes, sir.
Q. How old are you, Aleece?
A. 14.
Q. When were you fourteen?
A. January 15th.
Q. You live with your mother and father here in Canton?
A. Yes, sir.
Q. What grade are you in?
[fol. 57] A. The 9th.
Q. The ninth grade. You go to school here?
A. Yes, sir.
Q. Do you understand the oath you just took to tell the truth? Do you understand that all right?
A. Yes, sir.
Q. Do you know James Myers?
A. Yes, I do.
Q. How long have you known him?
A. About two years.
Q. Directing your attention to Saturday night, July 29th of this year, and ask you whether or not you were with James that night?
A. Yes, sir, I was.
Q. Where were you all at about 11 o'clock that night?
A. We were on a dirt road that turned off of Finney Road.
Q. Were you in a car?
A. Yes, sir.
Q. Was the car moving or stopped?
A. Stopped.
Q. Do you know whether or not this was a public road you were parked on?

A. (No answer)
Q. Did cars come by while you all were stopped there?
A. Yes, sir.
Q. Did they pass by the car you were in?
A. Yes, sir.
[fol. 58] Q. Do you know whose car you were in?
A. Mr. Myers'
Q. James' father's car?
A. Yes, sir.
Q. Do you know what kind of car it was, what make?
A. Yes, sir, '59 Ford.
Q. Ford. At the time you all stopped there and after you stopped where were you seated in the car?
A. On the driver's side.
Q. And where was James seated?
A. On the right hand side.
Q. Can you tell us what you all were doing—was there any noise in the car or anything?
A. Yes, sir, we were playing the radio.
Q. Playing the radio. What side of the—you say James was seated on the right hand side of the car?
A. Yes, sir.
Q. Would you tell the jury how he was seated—was he seated straight in the seat or how?
A. Well, sir, he was sorta up against the door.
Q. Leaning up against the door?
A. Yes, sir.
Q. You all were playing the radio?
A. Yes, sir.
Q. Did anything happen then that you all discussed between you?
A. I don't understand the question.
Q. Did anything happen while you all were parked there?
[fol. 59] A. Yes, sir.
Q. What's the first thing that happened?
A. Well, first, we smelled whiskey.
Q. You smelled whiskey?
A. Yes, sir, and then James heard something but didn't pay too much attention to it.

Q. Then what happened?

A. Then this colored man opened the door and put a knife to James' throat.

BY THE COURT:

Aleece, if you will talk just a little bit louder so that all of us can hear. Just be at ease and just talk a little bit louder.

BY MR. WALLER:

Q. You say he opened the door and put a knife to James' throat. Is that what you said?

A. Yes, sir.

Q. Which door did he open?

A. The right.

Q. Did he say anything?

A. Yes, sir, he said something but I don't remember his exact words.

Q. Then what happened?

A. Well, then James started to hit him and I screamed and I got out of the car. He told me if I didn't come back he would cut James' throat so I came back and got in the car and then he told me to drive and I can't drive a straight shift. And I tried but I couldn't. So James saw that I couldn't convince him and then he made me [fol. 60] change places with James.

BY MR. GREAVES:

Judge, I can't hear what she's saying. I don't know whether the jury can.

BY THE COURT:

Aleece, Mr. Greaves has got to hear you and that gentleman who has his hand up to his ear has got to hear you. If you will go just a little bit slower and I know that it is hard for you to talk but you will just have to talk so we can hear you. Talk just a little bit louder. I put everybody out of the court room now. I don't want you to be embarrassed. Just talk to us and try to keep your voice up. All right.

BY MR. WALLER:

Q. Would you go back there and tell me—you said he made you all change places on the seat?

A. Yes, sir.

Q. Did you get out of the car or did you just climb over James?

A. James went over me.

Q. James went over you?

A. Yes, sir.

Q. What did the negro man do then?

A. He put the knife at my throat.

Q. He put the knife at your throat?

A. Yes, sir.

Q. Anything else?

A. No, sir, then he made James drive.

Q. He made James drive?

A. Yes, sir.

[fol. 61] Q. Then what happened?

A. And then James—he told James to take everything out of his pockets, that he was going to take all of his money. James didn't have any. And so he took everything out of his pocket and he gave the negro his watch and then he told James to drive and then James drove. He directed James where to go.

Q. When James took everything out of his pocket, I will ask you what was said to James by the negro, if any thing?

A. James told him that he didn't have any money and the negro told him to shut up and not to get smart with him.

Q. Then you all drove—did you turn around or go forward or what?

A. We went forward.

Q. Do you know how far you went?

A. Yes, sir, I would say about a mile and a half or two miles.

Q. Then what happened?

A. Then there's a curve in the road. There's a silver gate right inside the curve. We pulled over to the curve and he made us get out.

Q. Now, wait just a minute. You say there is a silver gate right inside the curve?

A. Yes, sir.

Q. You pulled over and he made you get out at the gate. Is that right?

A. Yes, sir.

Q. All right. At the time you all were driving what [fol. 62] was the negro doing, if anything?

A. (No answer)

Q. Where did he have his hands?

A. He had one of them on the seat and one of them knife around my neck.

Q. When you all got up to the gate and parked, then what happened?

A. Then he made us get out of the car.

Q. Then what did you do?

A. Then we crossed over this barbed wire fence.

Q. What was on the other side of the barbed wire fence?

A. A corn field.

Q. Did you go—then where did you go?

A. We went into the corn field.

Q. How far into the corn field did you go?

A. About two hundred feet.

Q. Then what happened?

A. Then he made James lie down on the ground, face toward the ground, and he made me lay down at first and I got back up and then he told me to take off my shorts and I told him I wouldn't do it and then he started to take them off and then I took them off.

Q. What did the negro have in his hand at that time?

A. A knife.

Q. Did you take your shorts off?

A. Yes, sir.

Q. Tell the jury at that time, Aleece, how you you [fol. 63] were dressed.

(No answer)

Q. What did you have on?

A. I had on black shorts and a white blouse.

Q. All right. Did you have on any under garments?

A. Yes, sir.

Q. What?

A. I had on my panties.
Q. What else?
A. And a brassiere.
Q. Did you take off your under pants when you took your shorts off or not?
A. Yes, sir.
Q. Then what happened?
A. Then he made me lay down.
Q. Was James laying down at this time?
A. Yes, sir.
Q. Then what happened?
A. Then he got down there, too, and James told him to get up and he told James he better lay back down.
Q. Then what did he do?
A. (No answer)
Q. Did he get on top of you?
A. Yes, sir.

BY MR. GREAVES:

I object to him asking leading questions.

BY THE COURT:

Mr. Waller, don't lead her any more than you have to. [fol. 64] I will let you lead her just a little bit under the circumstances and her age but don't do it any more than you have to.

BY MR. WALLER: (continuing)

Q. Aleece, you were lying on the ground. Were you on your back or your face?
A. My back.
Q. Where was James in reference to you at that time?
A. He was beside me.
Q. And you didn't have on any clothes from your waist down. Is that right?
A. No, sir.
Q. Then what happened next?
A. Then he made me get up and I put back on my shorts.
Q. Before you got up, did anything else happen?
A. Well, I tried to grab the knife and I cut my left hand.

Q. Which hand did you cut?
A. My left hand.
Q. All right. Would you stand up, please. Hold up your hand and palm it out so the jury can see it.
A. (Witness showed her hand to the jury.)
Q. I want you take the index finder of your right hand and point to where it cut.
A. (Witness pointed)
Q. Did it bleed?
A. Yes, sir.
Q. All right. I want you to—you got down one time [fol. 65] and he made you get back up, and take your pants—your shorts and your under pants off.
A. Yes, sir.
Q. Then he made you get back on the ground.
A. Yes, sir.
Q. Correct?
A. Yes, sir.
Q. You know I talked to you the other day and I want you to tell me what happened then, if you will.
A. After he made me lie down?
Q. Yes.
A. Well, then, he got on top of me.
Q. He got on top of you?
A. Yes, sir.
Q. Is that when you cut your hand?
A. Yes, sir.
Q. Is that the same knife he was holding to your throat?
A. Yes, sir.
Q. All right. Then what did he do when he got on top of you?
A. (No answer)
Q. Did he have his clothes on?
A. Yes, sir.
Q. Did he takes his pants off?
A. No, sir.
Q. Did he unfasten his pants?
A. Yes, sir.
Q. In the front?

[fol. 66] BY MR. GREAVES:

Judge, I still object to him leading.

BY THE COURT:

Ordinarily you would be right, Mr. Greaves.

BY MR. GREAVES:

What?

BY THE COURT:

I say, ordinarily you would be right but I am going to permit just a little leading.

BY MR. GREAVES:

Note that the Defendant objected to the leading questions.

BY THE COURT:

All right.

BY MR. WALLER: (continuing)

Q. While he was on top of you, Aleece, did he do anything to you?
A. Yes, sir.
Q. Did he put anything in you?
A. Yes, sir.
Q. Where?
A. (Witness crying)
Q. Do you understand the term rape?
A. Yes, sir.
Q. Do you know what it means?
A. Yes, sir.
Q. Did he rape you?
A. Yes, sir.

BY THE COURT:

[fol. 67] Now, Mr. Waller, I sustain Mr. Greaves' objection to that because that's a conclusion. I am going to let you do a little leading.

BY MR. GREAVES:

I object to him putting words in her mouth again.

BY THE COURT:

I sustain the objection to that. That's a conclusion. I will let you bring out the facts. Aleece, just go ahead, just like you were telling it. Your mother—I mean, your people are here. Don't be any more embarrassed than you have to. And just tell and answer Mr. Waller's question. Just go ahead and answer it.

BY MR. WALLER: (continuing)

Q. Do you know—do you understand a man's sex organs, Aleece?
A. Yes, sir.
Q. Do you understand that?
A. Yes, sir.
Q. Did he do anything with his sex organs to you?
A. Yes, sir.
Q. What?

BY MR. GREAVES:

That's leading again, Your Honor.

BY THE COURT:

I know but—I don't think that's leading. I overrule the objection.

BY MR. GREAVES:

Note the objection to it.

[fol. 68] BY THE COURT:

All right.

BY MR. WALLER: (continuing)

Q. That means you can answer my question.
A. Would you mind repeating it, please?
Q. I asked you if he did anything with his sex organ to you?
A. Yes,sir.
Q. What?
A. (No answer)
Q. Do you understand what a woman's female organ is?

A. Yes, I do.
Q. Vagina. Do you understand that term?
A. Yes, sir.
Q. Did he do anything to your vagina?
A. Yes, sir.
Q. What?

BY MR. GREAVES:

Judge, I am still objecting to him putting things in her mouth.

BY THE COURT:

I overrule the objection.

BY MR. GREAVES:

Note our objection again.

BY THE COURT:

All right. Aleece, just go ahead, honey, and tell what he did to you. Just go ahead.
[fol. 69] A. I don't know how.

BY THE COURT:

Well, you understand Mr. Waller's question. Just answer Mr. Waller's question.

BY MR. WALLER: (continuing)

Q. Look, honey, did he put anything in you?
A. Yes, sir.
Q. What did he put in you? You said you understood what a man's sex organ was. Did he put that in you?
A. Yes, sir, he did.

BY MR. GREAVES:

We object again. Let the record show.

BY THE COURT:

All right. I will overrule the objection.

BY MR. WALLER: (continuing)

Q. Where did he put it in you, Aleece?
A. His sex organ.

Q. In your sexual organ?
A. (No answer)
Q. In your vagina?
A. Yes, sir.
Q. All right. What did he do when he put it in?
A. (No answer)
Q. Did he move at all?
A. Yes, sir.
Q. How?
A. Up and down.
Q. Up and down?
A. Yes, sir.

[fol. 70] BY MR. GREAVES:

We are still objecting. I just want the record to show.

BY THE COURT:

All right. I overrule the objection. That's not leading, anyway.

BY MR. WALLER: (continuing)

Q. After he put his sex organ in your vagina and moved up and down . . . . .
A. Yes, sir.
Q. More than once?
A. Yes, sir.
Q. Several times?
A. Yes, sir.
Q. How long?
A. I don't know, about thirty minutes, I guess.
Q. Did he still have the knife in his hand at this time?
A. Yes, sir.
Q. Was this negro man clean shaven or not?
A. No, sir, he was not.
Q. What did he have?
A. A goatee.
Q. Something growing on his chin, is that what you are talking about?
A. Yes, sir.

BY MR. GREAVES:

Judge, again, I object to him asking about the chin beard.

[fol. 71] BY MR. WALLER:

She said a goatee, Your Honor.

BY THE COURT:

Yes, I overrule the objection.

BY MR. GREAVES:

Note our objection again.

BY MR. WALLER: (continuing)

Q. I ask you whether or not you have ever had sexual relations with a man, Aleece?

A. No, sir.

Q. And he went up and down on you, you say for some several minutes. Is that right?

A. Yes, sir.

Q. What did he do then?

A. He got up.

Q. What did he do then?

A. He made me get up.

Q. You were bleeding from your hand at that time. Was anything else wrong with you then?

A. (No answer)

Q. When you got up.

A. I didn't notice.

Q. Did you put your clothes back on?

A. My shorts.

Q. What did you do with your under pants?

A. I left them there.

Q. Left them there in the corn field?

A. Yes, sir.

[fol. 72] Q. Left them there in the corn field?

A. Yes, sir.

Q. What color were they?

A. Blue, I believe.

Q. Did you all leave the corn field together?

A. Yes, sir.

Q. Then what happened?

A. Then we got back in the car and he made me sit in the middle and James was on the other side and he made us put our heads on the floorboard.

Q. You say he made you and James get inside and put your heads on the floorboard. Is that what you are saying?

A. Yes, sir, that's what I said.

Q. All right. Then what happened?

A. Then he drove. And he told us he was going to wreck the car and started driving real fast and real crazy and then he slowed down and told us he was going to take us back to where he found us. And he took us back there and he parked and he was hunting for a gun.

Q. You are going to have to slow down. He took you where now? Go slower.

A. He said he was going to take us back to where he got us. And then he drove a little while. And when we came back to where we were all the time we had our heads on the floorboard and he had a knife in my back.

Q. Had the knife in your back?

A. Yes, sir.

[fol. 73] Q. So you were laying face down on the floorboard?

A. Yes, sir. And then he looked for a gun in the car and he asked me if I had one in my purse and I told him "No." And he looked in the back seat of the car and under the back seat and he made James open the dash—open the glove compartment to see if there was a gun in there and there wasn't. And then he sat there and he told us he had leukemia and he could kill us and it wouldn't matter to him because he would die anyway. And then he told us if we knew what was good for us we would keep our heads there on the floorboard. Then he got out of the car and we stayed there for about ten more minutes, and James said we'd better.

Q. He told you if you knew what was good for you you wouldn't get out of the car?

A. Yes, sir.

Q. And you all stayed there about ten minutes in the car.

A. Five or ten minutes. And he told us he would leave the keys at the fork of the road. And then we got out and we cut across the field to Mr. Craft's house. We

didn't know who lived there at the time. And we called and somebody—they wouldn't let us in at first and then his son came to the door and came up there and asked us who we were and what happened. And they were real nice. They let us in.

Q. Wait a minute. I can't hear you. You went up to Mr. Craft's house?

A. Yes, sir.

Q. Then what happened?

[fol. 74] A. And we called to Mr. Craft and his son came down and let us in. His son was down from Jackson, I believe, staying with them and he let us in and let us sit on the couch while Mrs. Craft called the highway patrol and they were calling my mother and his father.

Q. Did you have anything on your hand that was cut at that time?

A. Yes, sir, while we were in the car James tore up one of his little brother's shirts and put it around my finger and when we got over to Mr. Craft's I took it off and tore off the collar of my blouse and put it on there because it was white.

Q. Did you have any blood on you anywhere?

A. Yes, sir, I had it on my blouse.

Q. At any time after this incident did you examine your shorts, the outside shorts that you had on?

A. No, sir, they were black.

Q. They were black?

A. Yes, sir.

Q. Did you look at them?

A. No, sir, I didn't.

Q. After it happened?

A. No, sir.

Q. Did you go to the hospital that night?

A. Yes, sir, I did.

Q. Did you go directly to the hospital from Mr. Craft's home?

A. After Mr. Noble asked us some questions I did.

Q. Were you examined when you arrived at the hospital?

[fol. 75] A. Yes, sir.
Q. By whom?
A. Dr. Haywood.
Q. Dr. Haywood?
A. Yes, sir.
Q. ~~Did he examine the same part of your body~~ (strike that, please) What part of your body did he examine?
A. (No answer)
Q. Did he look at your hand?
A. Yes, sir, he looked at my hand and he fixed that up.
Q. Did he examine your female . . . .
A. Yes, sir.
Q. . . . . organs?
A. Yes, sir.
Q. Were you treated by Dr. Haywood after that?
A. Yes, sir.
Q. Were you treated for your female organs?
A. Yes, sir.
Q. Your witness.

BY MR. GREAVES:

Stand aside. I don't care about asking her anything.

BY THE COURT:

All right. You can stand aside, Aleece.

CHARLES H. HEYWOOD

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

[fol. 76] BY MR. WALLER:

Q. State your name, please, sir.
A. Charles H. Heywood.
Q. What is your occupation, sir?
A. Physician.
Q. You are also known as a medical doctor. Is that correct?

A. That's correct.
Q. Where did you attend medical school, Dr. Haywood?
A. University of Tennessee.

BY MR. GREAVES:

We waive showing his qualifications.

BY MR. WALLER:

Let the record show that counsel for the defendant waives the presentation of the doctor's qualifications and stipulates he is a qualified medical doctor and practicing physician.

BY MR. WALLER:

Q. You have a clinic here in town, do you not, doctor?
A. Yes, sir.
Q. You also attend patients at the Canton hospital, don't you?
A. That's right.
Q. In your experience as a medical doctor are you acquainted with, you might say, the reproductive organs of women.
A. Yes, sir.
Q. Do you treat all types of ailments and conditions occurring to the female organs?
[fol. 77] A. Yes, sir.
Q. I direct your attention to the night of July 29th or early morning hours of July 30th and ask you whether or not you received a call to attend a patient at the Canton Hospital?
A. Yes, sir.
Q. What time was that, doctor, if you recall?
A. It was between 3 and 3:30 in the morning.
Q. Did you go to the Canton Hospital?
A. I did.
Q. And would you just tell the jury what you found when you arrived there?
A. Well, I found this young girl who they had called me to see that they said she had been assaulted.

Q. Now, without telling what anybody else said, I will ask you if this young girl you attended was Aleece Gober?

A. That's right.

Q. And did you examine her?

A. I did.

Q. And what—before we go into the examination I will ask you what condition you found her in, what did you observe as a doctor when you saw her?

A. Well, she was laying on the examining table there, and her hands and dress were bloody. She had a lacerated finger on, I believe it was on the left hand, and her—when I asked her—when I asked them what the trouble was, why they called me to see her, they said . . . . .

BY THE COURT:

Don't tell what she told you, doctor.

[fol. 78] A. Well,

BY MR. WALLER:

Q. Did you examine her?

A. I was asked to examine that patient and see if she had been assaulted.

Q. What do you mean when you use the term "assaulted?"

A. Raped.

Q. Did you make such an examination?

A. I did.

Q. Would you tell the jury in detail, sir, what you found?

A. Well, all around the outside of her vagina was bruised and swollen and it was bloody and the hymenal ring was ruptured and torn and then I took a syringe and aspirated, drew some of the fluid of her vagina and examined that and found male sperm present in her vagina. Then we put that under a microscope, that fluid under a microscope, so we could see if there was sperm present and there was. And after that, why, then I went ahead and repaired her finger that had been cut with a knife.

Q. Now, speaking of the outside area of the vagina, would you state in detail what you found, again, sir?

A. Well, she was bloody between her legs. And the hymenal ring was torn and she was swollen and bruised and fresh blood was present there.

Q. The hymen ring is located where, sir?

A. That's right at the entrance to the vagina.

Q. In putting it in lay language, what does the hymen ring mean in so far as a woman's past sexual relations is concerned?

[fol. 79] A. Well, usually it indicates whether they have ever had intercourse or not.

Q. Is the hymen ring ruptured with intercourse?

A. Usually, is, yes, sir.

Q. I will ask you whether or not the hymen ring of Aleece Gober ruptured . . .

A. It had.

Q. Recently.

A. Recently.

Q. Recently?

A. Yes, sir.

Q. Is that what was causing the blood?

A. Yes, sir, and the bruises between her legs and the entrance to her vagina.

Q. I ask you whether or not you reached a conclusion as to whether or not she had been raped?

A. Well, she had been—had had sexual intercourse forcibly.

Q. And you say that you recovered male sperm?

A. That's right.

Q. As far as the anatomy of the body is concerned, doctor, would you tell the jury where you recovered the male sperm?

A. In the mouth of the womb.

Q. In the mouth of the womb?

A. That's right.

Q. And you examined that, as you said, with a microscope?

A. That's right.

[fol. 80] Q. Your witness.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Doctor, this sperm that you found, could you tell whether that was white or black sperm, male black or male white, could you tell?

A. No, sir, there is no way for us to tell.

Q. No way for you to tell?

A. No, sir.

Q. You say it shows that was the first time she had had intercourse?

A. Yes, sir.

Q. You are positive of that?

A. All evidence indicated that.

Q. That's all.

BY MR. WALLER:

Thank you, doctor.

BY THE COURT:

Are you all through with the doctor?

BY MR. WALLER:

Yes, sir.

(Witness excused)

CHARLES SNODGRASS

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. State your name, please, sir.

A. Charles Snodgrass.

[fol. 81] Q. Where do you live, Mr. Snodgrass?

A. Canton.

Q. You have for a number of years served with the Mississippi State Highway Safety Patrol?

A. Yes, sir.

Q. Recently you were changed from a uniform patrolman, to what?

A. To the Identification Bureau.

Q. Are you now assigned to the headquarters office in Jackson?

A. Yes, sir.

Q. Working in identification work?

A. Yes, sir.

Q. I ask you whether or not you assisted the sheriff of Madison County at his request in a case involving an assault in Madison County?

A. I did.

Q. Do you recall the date and the time that you proceeded with your investigation or assisted him in his investigation?

A. Yes, sir, it was on July the 30th.

Q. What time, please, sir?

A. About 2 o'clock in the morning.

Q. I will ask you whether or not you were present at the arrest or immediately after the arrest of one William Smith, Jr.?

A. I wasn't present at the time he was arrested. I saw him shortly after he was arrested.

Q. Do you see him in the court room?

[fol. 82] A. Yes, sir.

Q. I ask you whether or not you were present and assisted the other officers in the service of the search warrant on his house to recover certain property?

A. Yes, sir.

Q. ~~Do you know what, were you present~~ (strike that question). What was recovered from his house, if anything?

A. A knife and a watch.

BY MR. GREAVES:

We object to that now. We got a confession here now. Judge, I think.

BY MR. WALLER:

I haven't mentioned that.

BY THE COURT:

I don't believe he has gotten to that, Mr. Greaves. What he's asking him about is about the search of the house. Now, are you making any objection to that? He hasn't asked him about anything else. Is that all right to proceed now? You make your objections—talk loud enough so Mrs. Welborn can get it.

BY MR. GREAVES:

I am not going to object to this. Let him ride.

BY THE COURT:

All right. All right, Mr. Greaves.

BY MR. WALLER: (continuing)

Q. I hand you—did you state what you recovered from the house?

A. A knife and a watch.

Q. All right, sir. I hand you a watch and ask you [fol. 83] whether or not that is the watch that you recovered?

A. Yes, sir, that's the watch.

Q. Is the watch in the same condition now as it was when you recovered it?

A. Yes, sir.

Q. I ask you who owns that watch?

A. James Myers.

BY MR. GREAVES:

I object to that.

BY THE COURT:

I sustain the objection to that because he doesn't know that, Mr. Waller.

BY MR. WALLER:

All right, sir.

BY THE COURT:

He doesn't know that to be true. I sustain the objection.

BY MR. WALLER: (continuing)

Q. Did you recover this watch from the home of William Smith, Jr?

A. Yes, sir.

Q. Have you had it in your possession and under your control since the time it was recovered?

A. Yes, sir.

Q. All right. ~~Did your investigation reveal that a watch~~ (strike that). What did your investigation reveal as to this watch?

A. My investigation revealed that a watch had been taken from a subject by the name of James Myers. After this watch was recovered from William Smith, Jr's house [fol. 84] the watch was carried by . . . . .

BY THE COURT:

Wait just a minute, Mr. Snodgrass, he hasn't asked you that. Don't volunteer.

BY MR. WALLER:

Q. I ask you whether or not you had a description of the watch at the time you were serving the search warrant on the—for the recovery of the recovery of the watch at William Smith's house?

A. Yes, sir.

Q. Did this watch fit that description?

A. Yes, sir.

BY MR. WALLER:

All right. If it please the Court, I offer this watch into evidence.

BY THE COURT:

All right. Any objection, Mr. Greaves?

BY MR. GREAVES:

The watch has not been identified as the property of Mr. Myers, Your Honor, and I object to it on that ground.

BY THE COURT:

I sustain the objection.

BY MR. WALLER:

I ask that it be marked for identification.

BY THE COURT:

That may be done. It may be marked for identification but not as an exhibit at this time.

BY MR. WALLER:

All right, sir.

[fol. 85] (Watch marked for identification only by the court reporter.)

BY MR. WALLER:

Q. Did you have at that time and place—did you have a description of any other property you were looking for that was used in this assault?

A. Yes, sir.

Q. What?

A. A knife.

Q. What kind of a knife?

A. It was a knife with some writing and advertising matter, the way it was described to me, with about a two inch blade in it.

Q. Did you find such a knife in the home of the defendant, William Smith, Jr?

A. Yes, sir.

Q. Where did you find it?

A. Between a partition wall.

Q. All right. How did you know to look between the partition wall for the knife?

A. William Smith, Jr. told us where the knife was and pointed out the place for us to look.

Q. Did you find the knife where he said it was?

A. Yes, sir.

Q. Did the knife fit the description you had as a result of your investigation?

A. Yes, sir.

Q. Do you now have that knife in your possession?

[fol. 86] A. Yes, sir.

Q. Is it in the same condition now as it was when you recovered it?

A. Yes, sir.

Q. All right. What does the knife have to do with the assault on Aleece Gober, if anything, if you know?

A. This was the knife that was used.

BY MR. GREAVES:

I object to that. He don't know.

BY THE COURT:

I sustain the objection.

BY MR. WALLER: (continuing)

Q. ~~Does that knife~~ (strike that) I ask you whether or not that knife was the same one that was described to you as having been used?

A. Yes, sir.

BY THE COURT:

I sustain the objection, Mr. Waller. You can't get around it this way. Mr. Greaves objected to it and I am sustaining the objection.

BY MR. WALLER: (continuing)

Q. Did your investigation—what type of weapon, if any, did William Smith use in this incident, if your know from your investigation?

A. A knife.

Q. All right. What type of knife, a butcher knife, hand knife, pocket knife, or what kind of a knife?

A. Pocket knife.

Q. All right. Is that a pocket knife you have in your [fol. 87] hand?

A. Yes, sir.

Q. Did your investigation reveal what type of blade it had on it?

A. About a two inch blade, sir.

Q. All right. What type of blade does that knife have on it?

A. About a two inch blade.

Q. All right. Did the investigation reveal what other type of mark or identifying word symbol that the knife might have had on it? From your investigation.

A. Only that it was advertising.

BY MR. GREAVES:

I object to that. He doesn't know what it was.

BY THE COURT:

I sustain the objection.

BY MR. WALLER: (continuing)

Q. I ask you whether or not this knife was the same color as the knife you were looking for with your search warrant?

A. Yes, sir.

BY MR. GREAVES:

We object to that.

BY THE COURT:

I sustain the objection.

BY MR. WALLER:

If it please the Court, I offer this knife into evidence.

[fol. 88] BY THE COURT:

Mr. Waller, everything he has testified to which is why I have sustained it is because it is what somebody told him. You can't get into it that way. I sustain the objection.

BY MR. WALLER:

I would like to have it marked for identification, Your Honor.

BY THE COURT:

You may have it marked for identification.

(Exhibit marked by the court reporter as State Exhibit 2 for identification only to the testimony of Witness Snodgrass.)

BY MR. WALLER: (continuing)

Q. Did you make any further investigation into the place where this assault took place?

A. Yes, sir, I did.

Q. Did you go to the scene?
A. Yes, sir.
Q. Who was with you?
A. Sheriff Noble and there was—James Myers went to the fence, as far as the fence, and Deputy Sheriff Stone and there was two or three other people I don't recall.
Q. What physical evidence was present?
A. Found a pair of panties.

BY MR. GREAVES:

I object. Did you go to the place?
A. I didn't understand you.

BY MR. GREAVES:

Q. Did you go into the corn field?
[fol. 89] A. Yes, sir.

BY MR. GREAVES:

Q. You went up to the place?
A. I went to the place, yes, sir.

BY MR. GREAVES:

All right, I don't object.

BY THE COURT:

All right, Mr. Waller.

BY MR. WALLER: (continuing)

Q. What physical evidence did you find within the corn field to indicate where this assault took place, if any?
A. I found the grass had been parted and tromped down. Found some blood and found a pair of blue panties.
Q. Where were the blue panties in reference to the blood?
A. Right there—right at the blood. It was in the middle between two rows of corn.
Q. And James Myers had pointed out to you where the corn patch was, so to speak?
A. Yes, sir.

Q. Now, I will ask you whether or not you have those blue under pants in your possession at this time?

A. Yes, sir.

Q. Are they in the same condition now as they were when you recovered them?

A. Yes, sir.

Q. Have they been in your custody, care, and control since the date and time you recovered them?

A. Yes, sir.

[fol. 90] Q. All right.

BY MR. WALLER:

If it please the Court, I offer these pants into evidence.

BY MR. GREAVES:

He has not identified them.

BY THE COURT:

No, I think—are you objecting to it?

BY MR. GREAVES:

Yes, sir.

BY THE COURT:

I overrule the objection. I think they have been sufficiently identified. He has offered them now as an exhibit. I will overrule the objection and permit the introduction as an exhibit.

(Exhibit received in evidence as marked by the court reporter as State's Exhibit 3 to the testimony of Witness Snodgrass.)

[fol. 91] BY MR. WALLER:

I want to ask the witness to step down for just a minute.

Q. Just for the record, what color are those pants, Mr. Snodgrass?

A. Blue.

Q. Are you now acquainted with Aleece Gober?

A. I didn't understand your question.

Q. Are you now acquainted with Aleece Gober?

A. Yes, sir.
Q. The young lady that's involved in this matter?
A. Yes, sir.
Q. Did you recover from her a blouse she had on?
A. (No answer)
Q. Any part of her clothes?
A. Yes, sir.
Q. Do you have that blouse in your possession ow?
A. Yes, sir.
Q. What color is it?
A. It's a white blouse.
Q. All right. Is it in the same condition now as it was when you recovered it?
A. After I recovered it, it was out of my control.
Q. Where was it—what did you do with it?
A. It was sent to the FBI laboratory at Washington.
Q. Was it sealed when it was sent?
A. It was sealed when it was sent, yes, sir.
Q. Is it sealed now?
A. Yes, sir, it is sealed now.
[fol. 92] Q. Have you tampered with it in any way?
A. No, sir.

BY MR. WALLER:

If it please the Court, we have here an envelope in which there is a white blouse. We would like to have marked for identification.

BY THE COURT:

All right. That may be done.

(Exhibit marked by the court reporter as State's Exhibit 4 to the testimony of Witness Snodgrass for identification only.)

BY MR. WALLER:

Q. Directing your attention now to the search of the defendant's house, William Smith, Jr., did you recover any other articles other than those we have referred to?
A. Yes, sir.
Q. What?

A. A pair of khaki pants.

Q. All right. Did you take those pants into custody?

A. Yes, sir, I did.

Q. All right. What did you do with them?

A. They were handled the same way as the blouse. They were sealed and sent off to the FBI laboratory.

Q. At the time you sealed them and sent them to the FBI laboratory, were they in the same condition then as when you recovered them?

A. Yes, sir.

Q. All right. I hand you a paper ba and ask you what that is?

[fol. 93] A. That's the khaki pants.

Q. All right. Have they been disturbed in any way since they were returned to you by the FBI laboratory?

A. No.

Q. Are they sealed?

A. Yes, sir.

Q. Has the seal been disturbed?

A. No, sir.

Q. All right. Those are the pants, the bag that has the pants in them, that you recovered from the defendant's house?

A. Yes, sir.

Q. And when we refer to pants, what do you mean?

A. The khaki pants that came from the house of William Smith, Jr.

BY MR. WALLER:

If it please the Court, I would like to have this bag marked for identification.

BY THE COURT:

All right.

(Exhibit marked by the court reporter as State's Exhibit 5 to the testimony of Mr. Snodgrass, for identification only.)

BY MR. WALLER:

Q. Did you recover any other articles of clothing that Aleece Gober was wearing on this occasion?

A. Yes, sir.
Q. What?
A. A pair of black shorts.
[fol. 94] Q. What did you do with them?
A. They were handled like the others, carried into headquarters, sealed and sent to the FBI laboratory.
Q. All right. I hand you a bag and ask you what is in it?
A. That's the black shorts taken from Aleece Gober.
Q. All right. Were the shorts in the same condition when you mailed them as when you received them into custody?
A. Yes, sir.
Q. Have they been opened or tampered with since they were returned to you by the FBI laboratory?
A. No, sir.

BY MR. WALLER:

If it please the Court, I offer this for identification.

BY THE COURT:

All right.

(Exhibit marked by the court reporter as State's Exhibit 6 to the testimony of Witness Snodgrass, for identification only.)

BY MR. WALLER:

Q. Did you talk to the defendant, William Smith, after his arrest?
A. Yes, sir.

BY MR. WALLER:

Your Honor, I am ready now.

JURY EXCUSED

BY THE COURT:

All right. The jury may retire.

(By order of the Court the jury retired from the [fol. 95] court room and the following proceedings were in the presence of the Court and in the absence of the jury.)

BY MR. GREAVES:

Judge, I would like to read this to the defendant back here.

BY THE COURT:

You want to do that?

BY MR. GREAVES:

Yes, sir.

BY THE COURT:

All right. Sheriff, take him back in the room with Mr. Greaves.

(After being out of the court room, pursuant to the foregoing, the defendant and Mr. Greaves then returned to the court room and the following proceedings were had and done in the presence of the Court and in the absence of the jury.)

BY MR. WALLER:

Q. Mr. Snodgrass, did the defendant in your presence make any oral statements about this assault?

A. Yes, sir.

Q. All right. I will ask you where he made those statements?

A. In the highway patrol headquarters building in Jackson.

Q. All right. Who was present?

A. I was present and Sam Ivy, who is the Director [fol. 96] of the Identification Bureau, was present. Mr. Art Richardson, who is with the highway patrol, was present. Sheriff Noble was present.

Q. What type of a room or where were you all situated within the building there?

A. We were in an office on the second floor of the headquarters building.

Q. Did it have bars on the window or anything like that?

A. No, sir.

Q. All right, sir. How were you dressed?

A. I was dressed in civilian clothes.

Q. All right. How was Sheriff Noble dressed?
A. Civilian clothes.
Q. How was Mr. Richardson dressed?
A. In civilian clothes.
Q. And how was Mr. Sam Ivy dressed?
A. In civilian clothes.
Q. All right. What weapons, or you might say, firearms or other weapons were exhibited in the presence of the defendant at the time he made this admission?
A. I don't recall any firearms being exhibited. I know that I had been wearing a firearm.
Q. Was he threatened with any weapons or threats in any way, words or remarks?
A. No, sir, he was not threatened.
Q. All right. What promises or rewards were offered to him to make a statement?
[fol. 97] A. No rewards or promises were made to him.
Q. What threats of violence or punishment were made to him in your presence at that time in order to induce him to make a confession?
A. There were no threats made.
Q. I ask you then whether or not the statement made by the defendant in your presence was free and voluntary?
A. It was.
Q. What advice was he given with reference to an attorney or advice from some one else before making the statement?
A. He was explained that he had the right to have an attorney present.
Q. What was told him in reference to the use of the statement later in court?
A. He was told that statement could be used in a court of law against him later.
Q. After having told him that was the defendant then willing, further willing to make a voluntary statement?
A. Yes, he was.
Q. Did he make a statement?
A. He did.
Q. I ask you whether or not it was reduced to writing?
A. It was.

Q. It was written?
A. Typewritten.
Q. Who typed the statement?
A. Art Richardson.
Q. That's the gentleman that you spoke of. I hand [fol. 98] you a typewritten, single spaced statement covering two full pages and ask you whether or not that's the statement that the defendant made?
A. Yes, sir, that's the statement.
Q. All right. In your presence?
A. Yes, sir.

BY THE COURT:

Mr. Waller, did you ask him—if you did, I didn't get it—when it was he was at the highway patrol office on the second floor?

BY MR. WALLER:

Q. What day was it?
A. It was made on the 30th, on Sunday.
Q. On Sunday, the 30th.

BY THE COURT:

What time?

BY MR. WALLER:

Q. What time?
A. Made about 4 o'clock in the afternoon.

BY THE COURT:

All right.

BY MR. WALLER:

Q. After the statement was typed was it read or exhibited to the defendant?
A. The defendant looked over the statement and I asked the defendant would he like for me also to read it back to him, which I did.
Q. Did you read every word of the statement?
[fol. 99] A. I read each and every word of it.
Q. On both pages?
A. Yes, sir.

Q. Did you ask him whether or not he understood the statement?

A. Yes, sir.

Q. What did he say?

A. He said he did understand the statement.

Q. Did he sign the statement?

A. Yes, sir,

Q. In presence of witnesses?

A. Yes, sir.

Q. The statement consisting of two typewritten pages, did you leave out anything or explanation that the defendant wanted to make of what he had said?

A. No, sir.

Q. Did you refuse to allow him to make any further remarks and include them in the statement?

A. No, sir.

Q. Is the statement complete in itself in so far as his detailing what happened in his confession generally?

A. Yes, sir.

Q. Now, it is already in the record, Mr. Snodgrass that this incident occurred in the vicinity of 2 A.M. on the 30th day of July 1961 and the statement was taken at approximately 4 P.M. on the 30th day of July, 1961. Had you seen the defendant at any time prior to the time he started making his confession?

[fol. 100] A. Yes, sir.

Q. Will you tell the Court whether or not the defendant had been abused in any way or threatened in any way to cause him to talk or to make a statement?

A. He had not been threatened or abused in any way, not to my knowledge.

Q. Based upon the statement made in your presence in the conversation that you had with the defendant at the time and place, did you do anything that would corroborate the facts in the statement?

A. Would you repeat that, Mr. Waller?

Q. Did you do anything to prove, corroborate, whether or not the statement was true.

A. I don't follow you there.

Q. Did you make any investigation based upon what the defendant said in the statement, any further?

A. Yes, sir.

Q. All right. We were talking earlier while the jury was here about the knife and the watch and the pants and other things. Was any information obtained from the defendant in reference to those articles?

A. Yes, sir.

Q. And in other words, you testified that you found the knife in the wall of his house?

A. Yes, sir.

Q. Did you get that information from the defendant?

A. Yes, sir.

Q. Did that prove to be true?

A. Yes, sir.

[fol. 101] Q. Did you recover the pants he was wearing the night of this assault?

A. Yes, sir.

Q. All right. At 4 o'clock in the afternoon do you know whether or not the defendant had been fed and given drink and permitted bathroom privileges throughout the day?

A. He was in the county jail until we carried him to the highway patrol headquarters. I know he had bathroom facilities there.

Q. Do you know whether or not he had been fed that day?

A. I don't know of my own knowledge.

Q. He was treated as a regular prisoner, wasn't he?

A. Yes, sir.

Q. Can you tell the Court anything, Mr. Snodgrass, that was done or said to the defendant that would cause him to involuntarily make this statement?

A. I knew of nothing.

Q. Did you promise him a light sentence if he would talk?

A. No, sir, I made no promises.

Q. Was he fully dressed at the time he made the statement?

A. Yes, sir.

Q. Was he handcuffed or shackled in any way at the time he made the statement?

A. No, sir.

Q. Were there any electronic devices or other electric [fol. 102] appliances attached to his body at the time he made the statement?

A. No, sir.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Before the confession you had applied to him electric devices, hadn't you, down there?

A. No, sir, I hadn't.

Q. You hadn't?

A. No, sir.

Q. Now, you state that free and voluntary, right out of his mouth he came and told you all he had committed this crime. The negro, I said, just free and voluntarily just came and said, "I did it." Is that it?

A. Free and voluntary, yes, sir.

Q. Free and voluntary. Now, isn't it a fact that you told him, you and the rest of them, told him that this other negro with him, who was in the robbery with him, had already confessed and that if he didn't confess to it that you were going to bring him back here and put him in the county jail and let a mob have him?

A. (No answer)

Q. Didn't you tell him that this negro, James Matlock, had already confessed to the crime—did you tell him that?

A. I don't recall. There's a possibility I did. I don't recall of having told him that.

Q. Then, didn't you tell him that if he didn't confess to the crime then he would be brought back here, locked up in the county jail in Canton and allow a mob to take him out and string him up?

[fol. 103] A. No, sir.

Q. You didn't tell him that?

A. No, sir.

Q. You deny that?

A. Yes, sir.

Q. You all had—this other negro, you already had gotten a confession from him, hadn't you?

A. Yes, sir.

Q. The negro with him in the robbery.
A. Matlock had admitted his part.
Q. Admitted his part.
Q. You didn't tell him that Matlock had already confessed and the best thing for him to do was to confess and you would leave him in Jackson and not bring him up here?
A. No, sir, I didn't mention anything about where he would be carried.
Q. That's all.

BY MR. WALLER:

Stand aside.

MR. BILLY NOBLE

having been previously sworn, was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are Sheriff Noble who previously testified in this case?
A. Yes, sir.
Q. What time and place did you arrest the defendant, [fol. 104] William Smith, Jr?
A. The defendant was arrested at his home at approximately 4 or 4:30 on the morning of September 30th by Deputy Sheriff Stone.
Q. Were you present when he was arrested?
A. No, sir.
Q. All right. When did you first see the defendant?
A. Canton Police Department.
Q. Canton Police Department?
A. Yes, sir.
Q. What time?
A. Around a quarter to five or 5 o'clock in the morning.
Q. Was he fully dressed at that time?
A. Yes, sir.

Q. All right. What did you do with him at the Canton Police Department?

A. He was placed in the Canton Police Department and made a transfer to the county jail along with several others that we picked up. He was placed in a line-up with approximately eight or nine other suspects at the county jail.

Q. At the county jail?

A. Yes, sir.

Q. And no mistreatment was given them, was there?

A. No sir, he was placed in the line-up with these subjects and the victims were brought in one at a time and they were told to sit and listen to each individual answer questions. This was done by Charley Snodgrass, at which point we observed the reaction to the questions [fol. 105] and to each individual. The victim was removed and the Myers boy was brought in and the same line of questioning went on with Charley asking each one in the line-up the different set of questions.

Q. How long did he remain at the Madison County jail?

A. He was taken along with the Medlock boy and another negro to the Hinds County—to the Mississippi Highway Patrol office in Jackson approximately 11 or 11:30 that morning.

Q. How long did he stay there?

A. He stayed there until around 6 o'clock, 5:30 or 6, at which time he was brought back to his house in the sawmill quarters at which point he pointed out to us the place where he had placed the knife and also the watch. He identified the pants that he had on that night that he had washed and placed in the duffle bag. We recovered the knife from the wall where he stated he had placed it. We recovered the watch from the kitchen where his wife had taken it out of the windowsill where he said he had left it. We did not recover the wallet.

Q. What time was that?

A. Approximately 6:30 or 7 o'clock the evening of September the 30th—July the 30th.

Q. What time did he give the confession?

A. He gave the confession around 3:30 or 4 o'clock on the evening of July the 30th.

Q. And you left Canton—Madison County jail here in Canton about 11 o'clock with him?

A. Yes, sir.

Q. Where did you go then?

[fol. 106] A. We took him to the Mississippi Highway Patrol Identification Bureau in Jackson where he, the Medlock boy were placed on the lie detector test there at the Mississippi Highway Patrol office.

Q. Was he put in the Hinds County jail at any time during the day?

A. After he was brought back to Canton and identified the knife and also his pants, his under shorts, and under pants were removed and he was given other clothes to put on. He was taken back to the Hinds County jail by myself that night.

Q. Do you know whether or not he was fed at any time during the day prior to the confession?

A. Breakfast facilities were available to him at the Canton jail.

Q. Were you present at the time he confessed?

A. Yes, sir.

Q. Had he been generally in your custody and within your observation from the time he was arrested until the time that he confessed?

A. No, sir.

Q. All right. Were you present in the highway patrol building when he was there?

A. Yes, sir.

Q. From your knowledge, was he mistreated in any way from the time he was arrested until the time he gave his confession and signed it?

A. No, sir.

Q. What threats or violence or abuse did you give or offer to the defendant in an effort to induce him to make [fol. 107] this statement?

A. He was confronted with the confession in front of James Matlock as to the part that he played to put him out of the car at the scene of the crime. James Matlock told him in his presence and also in my presence that he had told us that they had gone there to rob them. They were left in the room together by themselves.

Q. What rewards, if any, did you promise William Smith, Jr?

A. (No answer)

Q. In other words, what promises did you give him in an effort to cause him to make this statement?

A. None.

Q. Did you tell him the sentence would be lighter if he would talk or do anything to coerce him to make the statement?

A. No, sir, the only thing that was told to him was that he was entitled to a lawyer and anything that he told us could be used on him in an open court of law. He was told that in the presence of James Matlock at which point he sat there for awhile and broke a couple of match sticks and throwed them in the ash tray and told me that he was the one we were looking for. And that he was the one that had done the crime. He proceeded to tell us the way he had gone which corroborated the statement given to us by the victims.

Q. He told you he was the man and that was a voluntary statement?

A. Yes, sir.

[fol. 108] Q. Then he proceeded to give you the details?

A. Yes, sir. I would ask him questions and he would answer them and then he would start and tell us the way that it happened and the place, the time and the method.

Q. And I believe Mr. Sam Ivy was present at this time?

A. Yes, sir, Mr. Sam Ivy, Mr. Art Richardson, Mr. Charley Snodgrass was taking down the statement at that time in my presence.

Q. Was the defendant shackled or handcuffed or tied up in any way?

A. No, sir.

Q. Was anybody holding a gun around him?

A. (No answer)

Q. Scare him or do anything to frighten him?

A. I had a sidearm on but it was hostered.

Q. I was holstered?

A. Yes, sir.

Q. Did any one threaten him—any other person threaten him in your presence?

A. Not to my knowledge.

Q. At the time you were talking to him, was the defendant normal in every way?

A. (No answer)

Q. Was he talking normally?

A. He talks low but you could hear him, I mean, he talked like he usually talks.

Q. Were you present when the statement was read [fol. 109] to him?

A. Yes, sir.

Q. From his appearance, in your opinion, did he understand the statement?

A. Yes, sir.

Q. Did he sign it?

A. Yes, sir.

Q. I believe that's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Mr. Sheriff, you say that he just freely and voluntarily told you and the other fellow that, "I am your man?"

A. Yes, sir.

Q. Told you that?

A. Yes, sir.

Q. Now, isn't it a fact that Snodgrass told him that if he didn't confess it, that the other negro had confessed to his part in the robbery and that if he didn't confess to the rape and sign a statement that they would bring him back to—back here to Canton and lock him up in your jail and let a mob have him?

A. I wasn't present if he made that statement, Mr. Jack.

Q. After Smith was taken from your jail here in Canton was he placed in the county jail before he made the confession?

A. No, sir.

Q. In Hinds County?

[fol. 110] A. No, sir. He was taken direct to the Mississippi Highway Patrol Identification Bureau.

Q. Didn't you all tell him, "Now, this machine picks you out as the one that committed that crime, you better confess?"

A. Would you repeat that question?

Q. Didn't you all tell him, "Now, this machine picks you out as the one that committed that crime and you better confess?"

A. It showed that—the questions that he answered showed that he was lying at the point or the question that was asked. . . .

Q. Did you tell him the machine said he was lying and he had better confess?

A. The machine did show that he was lying.

Q. I asked you if you told him?

A. Yes, sir, I told him that, yes, sir.

Q. You told him he had better confess because the machine showed he was lying?

A. The machine showed he was lying, yes, sir.

Q. That's all.

BY MR. WALLER:

Call Mr. Sam Ivy.

MR. SAM IVY

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

[fol. 111] Q. You are Mr. Sam Ivy of the Identification Bureau of the Highway Safety Patrol of the State of Mississippi?

A. That's right.

Q. You were requested by Sheriff Billy Noble of Madison County to assist him in the investigation of a rape case in Madison County on July 30th, were you not, Mr. Ivy?

A. Yes, sir.

Q. Do you see the defendant, William Smith, in the courtroom?

A. Yes, sir.

Q. I ask you whether or not you saw him at the Patrol headquarters on Sunday, July the 30th?

A. Yes, sir.

Q. What time did you see him?

A. It was shortly after dinner.

Q. Shortly after noon?

A. Yes, sir.

Q. All right. Did you talk to the defendant?

A. I did.

Q. Were you present when he made an oral confession in reference to an assault on a young lady here in Madison County?

A. Yes, sir, I was.

Q. Preliminary thereto I will ask you what threats or punishment or violence was made to him by any one.

A. No one threatened him or punished him in any manner.

Q. What promises of reward or light punishment was offered to him in an effort to induce him to make a statement?

A. No, sir.

[fol. 112] Q. All right. He was questioned about his implication in this matter, was he not?

A. Yes, sir.

Q. What advice was he given in reference to an attorney or the fact that a statement that he made might be used in a court of law?

A. He was advised of his right there which is . . .

Q. Was that before he confessed?

A. Yes, sir.

Q. Mr. Richardson was there in the room with you all, was he not?

A. That's right, he was.

Q. Now, he's the gentleman who typed this statement, isn't he?

A. Yes, sir.

Q. I ask you whether or not the statement as typed was essentially the words that he spoke?

A. He typed it exactly as he said it.

Q. In other words, he reproduced the words on the typewriter as they were spoken by the defendant?

A. Yes, sir.

Q. I ask you whether or not there was any weapons or any other devices exhibited around the defendant to scare him to cause him to talk when he didn't want to?

A. No, sir.

Q. From your observation of the defendant, I will ask you whether or not the statement that he did make was entirely free and voluntary on his part?

[fol. 113] A. Yes, sir.

Q. Were you present after Mr. Richardson finished typing the statement?

A. Yes, sir.

Q. Was it read to him?

A. Yes, sir.

Q. I ask you whether or not the defendant in your presence signed the statement?

A. Yes, sir, he did.

Q. Is the statement complete within itself or was something left out that the defendant might have said?

A. It is complete—what he said.

Q. Is this room in the Highway Patrol headquarters just an ordinary room like you find in any office building?

A. Identification Bureau.

Q. Desk and chairs—no windows?

A. Yes, sir, there's windows.

Q. No bars?

A. No bars.

Q. How were you dressed?

A. I was dressed in a short sleeve sport shirt.

Q. Did you have on any weapons?

A. No, sir.

Q. Was the defendant dressed—fully dressed?

A. Yes, sir.

Q. Normal in every way. Any shackles or handcuffs on him?

A. No, sir.

[fol. 114] Q. Were you present at the taking of a confession from a negro named Medlock?

A. No, sir, I wasn't present when they took that.

Q. Did you see Medlock that day?

A. Yes, sir.

Q. How many years experience have you had in this type of work?

A. Fourteen years.

Q. Was the defendant mistreated in any way to cause him to make this statement?

A. No, sir, he was not.

Q. You tell the Court, do you, Mr. Ivy that his confession is entirely free and voluntary?

A. Correct.

Q. The defendant knew when he made it that it could be used in court against him. You tell the Court that?

A. That's correct.

Q. That's all.

BY MR. GREAVES:

Mr. Ivy, stand aside. I don't have any questions.

BY MR. WALLER:

Call Mr. Richardson.

MR. ARTHUR B. RICHARDSON

after having been duly first sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. State your name, please, sir.

[fol. 115] A. Arthur B. Richardson.

Q. You are with the Identification Bureau of the State Highway Department, of the State Highway Patrol?

A. I am with the State Highway Patrol. I am not a member of the Identification Bureau, however.

Q. You work for them?

A. Yes, sir.

Q. Were you working on Sunday, July 30th?

A. Yes, I was.

Q. Do you remember talking to or being in the presence of William Smith, Jr. who is seated over there the day—that same day in the afternoon?

A. Yes, sir.

Q. I ask you whether or not you typed a two page confession that William Smith gave at that time?

A. Yes, sir, I did type it.

Q. I will ask you to state whether or not that statement is reproduced by you in his words as the questions were asked him?

A. Correct.

Q. Is Mr. Ivy—the name "Ivy" that appears in there, is that Mr. Sam Ivy?

A. That's Sam Ivy, investigator for the Identification Bureau.

Q. Did you take down in shorthand or on tape or how did you reproduce it?

A. I did not. I took it on the typewriter as he made the statement.

[fol. 116] Q. In other words, you wrote—you typed out the questions and typed out the answers for each and every one of them as you came to them?

A. Yes, sir.

Q. You used his language in answering those questions?

A. I did.

Q. I will ask you, prior to his making the confession, were you in the room?

A. (No answer)

Q. Before he started giving you this statement that you took down on a typewriter?

A. Yes, I was.

Q. All right. I ask you what promises or rewards were offered to Smith in an effort to induce him to make this statement?

A. None.

Q. What threats or violence or threats of punishment were offered to him to cause him to make the statement?

A. None.

Q. I ask you whether or not he was advised that he had a right to use a lawyer, to the use of a lawyer, and that the statement could be used in a court of law?

A. He was.

Q. Was he normal in appearance and in talking—did he appear to be normal in every way?

A. Yes, sir.

Q. All right. After those statements were made to him. [fol. 117] I take it then he started talking and you started typing. Is that right?

A. That's correct.

Q. Were you present after you finished typing the statement?

A. (No answer)

Q. Did you remain in the room?

A. I did.

Q. I ask you whether or not that statement was read to him word for word?

A. It was.

Q. Was he asked whether or not he understood it?

A. He was.

Q. What did he say?

A. He replied that he did understand it.

Q. All right. I ask you whether or not he signed it?

A. Yes, he signed both pages.

Q. You were dressed in street or civilian clothes at that time?

A. Yes.

Q. Did you have any weapons on?

A. No, I did not have a weapon.

Q. Was that a normal room just like a room you find in any office building, is that right?

A. (No answer)

Q. It wasn't a jail or a cell?

A. Secretary's office in the Identification Bureau.

[fol. 118] Q. Secretary's office and you were seated at the typewriter?

A. That's correct.

Q. Was the defendant shackled or handcuffed in any way?

A. No, he was not.

Q. I believe that's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. You say when this negro spoke you wrote down each and every answer?

A. Yes, sir, I did.

Q. Isn't it a fact that you wrote it down in a white man's language and not in the language of a negro with a second grade education?

A. No, I don't think that's true altogether. I think if you will read the statement carefully you will find the grammatical construction and so forth indicate a person with a little less than an average grammar training.

Q. You say that things like "I opened the door and caught the white man around the reck. He began to scream and I threatened him with my knife." You say that was the perfect language of a negro with a second grade education?

A. That's the statement as he gave it.

Q. That's the kind of language he used. O.K. That's all.

[fol. 119] MR. RICHARD STONE

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are Mr. Richard Stone, deputy sheriff of Madison County?

A. Yes, sir.

Q. I will ask you whether or not you arrested one William Smith on the morning of July 30, 1961?

A. I did.

Q. Where was he?

A. At his home.

Q. That's in Madison County, Mississippi?

A. Yes, sir.

Q. I ask you whether or not if you at that time mis-

treated or abused or otherwise in any way mistreated the defendant, William Smith?

A. I did not.

Q. Where did you carry him?

A. Brought him to the city jail in Canton.

Q. That's the city of Canton police station and jail here in the town limits?

A. Yes, sir.

Q. Did you see Sheriff Billy Noble there?

A. Yes, sir.

Q. Where you present when he was carried from the city jail to the county jail?

A. No, sir, not at the time he was removed from the [fol. 120] city jail to the county jail, I wasn't.

Q. Did you see the defendant any more from that time —what time was that?

A. That was about 4 o'clock Sunday morning.

Q. All right. Did you see the defendant any more after that until he confessed that afternoon?

A. No, sir.

Q. That's all.

BY MR. GREAVES:

I don't want to ask him anything.

BY MR. GREAVES:

The defendant will take the stand.

BY THE COURT:

All right.

(Defendant's case)

WILLIAM SMITH, JR.,

the Defendant, after having been first duly sworn, was called as a witness in his own behalf and testified as follows:

DIRECT EXAMINATION

BY MR. GREAVES:

Is it all right if I stand this close to him? He talks so darn low I can't understand him.

BY THE COURT:

Oh, yes, that will be all right.

BY MR. GREAVES:

Q. Your name is William Smith, Jr?
A. Yes, sir, that's right.
Q. Open your mouth so the lady can hear you?
[fol. 121] Q. I have read to you back there in the back room a so-called confession from you. Did you make this confession?
A. No, sir, I didn't.
Q. I will ask you, this paper here, with your name to it, why did you tell them that you had committed this crime?
A. Because they threatened to bring me back to Canton and put me in the county jail and have a mob get me.
Q. Who told you that?
A. Mr. Snodgrass.

BY THE COURT:

I can't understand him, Mr. Greaves. I didn't understand what he said.

BY MR. GREAVES:

Q. I asked . . .
A. Mr. Snodgrass told me if I didn't say I did it him and the sheriff would bring me back to Canton and put me in the county jail and turn me over to a mob crowd.
Q. Now, are you telling the truth?
A. (No answer)
Q. Is that the reason you signed?
A. (No answer)
Q. Now, this—I read this thing to you. Did you—is that your language?
A. (No answer)
Q. Is that the kind of language you use?
A. I didn't know nothing about it.
Q. How far did you go in school?
A. Second grade.

[fol. 122] Q. Second grade is as far as you've been. Now, when they put you on this machine down there at Jackson—they put you on that, didn't they?

A. Yes, sir.

Q. When they got through with it, what did they tell you then?

A. The man what had me on the test, he told me I was lying. I went on back outside.

Q. You said the man who had you on the test said you were lying. Is that all?

A. Yes, sir, and he told me to go on back outside, after he got through with the test.

Q. And you tell the Court that the signing of this thing by you was not of your own free will but was done through fright and fear of being mobbed?

A. Yes, sir.

Q. That's all.

CROSS EXAMINATION

BY MR. WALLER:

Q. You looked at this statement, didn't you?

A. No, sir, I didn't.

Q. Mr. Greaves read it to you, didn't he, back there in the room awhile ago?

A. Yes, sir.

Q. You looked at your signature on it?

A. Yes, sir.

Q. You write your name, don't you?

A. Yes, sir.

[fol. 123] BY MR. WALLER:

He's answering "yes."

BY MR. WALLER:

Q. You signed it, didn't you?

A. I don't know, sir. I can't say.

Q. You can't say whether you did or not?

A. No, sir.

Q. But you do write your name, don't you?

A. Yes, sir.
Q. That's all.

BY MR. GREAVES:

That's all we have, Your Honor.

BY MR. WALLER:

I want to call Mr. Snodgrass, Your Honor.

BY THE COURT:

All right.

BY THE COURT:

Let the Defendant step down. Are you through with him now? Let the Defendant stop down if you are through with him.

(State of Mississippi Case)

MR. CHARLES SNODGRASS

having been previously sworn was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. Mr. Snodgrass, the statement has been made that you told the Defendant at or before the time he made the confession that you were going to put him in the Madison County jail and let a mob get to him. I ask [fol. 124] you whether or not you made such a statement?
A. No, sir, I did not.
Q. At any time?
A. I did not.
Q. To the Defendant or in the Defendant's presence?
A. No, sir.
Q. On Sunday, July the 30th, 1961, did you make any statement of words to that effect at any time, anywhere?
A. No, sir.
Q. That's all.

BY MR. GREAVES:

Stand aside.

BY MR. WALLER:

Your Honor, for the record the State now offers the statement into evidence.

BY MR. GREAVES:

We vigorously object to it, Your Honor.

BY THE COURT:

Where's Mr. Gilfoy, Mr. Waller?

BY MR. WALLER:

Sheriff Gilfoy?

BY THE COURT:

Yes,

SHERIFF J. R. GILFOY

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

[fol. 125] BY MR. WALLER:

Q. You are J. R. Gilfoy, sheriff of Hinds County?
A. Yes, sir.
Q. You were so acting as sheriff of Hinds County on the 30th day of July, 1961, were you not?
A. Yes, sir.
Q. I ask you whether or not Sheriff Billy Noble of Madison County requested your assistance in the investigation of a rape case here in Madison County?
A. Yes, sir.
Q. Did you undertake to assist him?
A. Yes, sir.
Q. At his request and under his direction?
A. Yes, sir.
Q. Did you meet Sheriff Noble and some other officers at the Highway Patrol headquarters which is located in

Hinds County, Mississippi on Sunday afternoon, July the 30th?

A. Yes, sir.

Q. I ask you whether or not the Defendant, William Smith, seated in the court room, made a confession or a statement at the time you were present?

A. He did.

Q. Prior to his making the statement I will ask you whether or not he was advised that any statement which he did make could be used against him in a court of law?

A. Yes, sir.

Q. What promises of reward were given to the Defendant to induce him to make the statement?

[fol. 126] A. None.

Q. What promises or threats of violence or punishment were offered him if he did not make a statement?

A. None whatever.

Q. From your observation of the circumstances there, I will ask you whether or not the statement that he did make was free and voluntary?

A. It was.

Q. And I will ask you how the statement was—wait just a minute. I hand you a two page typewritten document which is the statement he made and ask you to read the top line there, top two or three lines of the statement.

A. (Reading "I, William Smith, ...

Q. Just read it to yourself. That says, sheriff, that you were present?

A. I was.

Q. Turn over on the second page. You signed it as a witness, did you not?

A. Yes, sir.

Q. And I ask you whether or not William Smith signed that statement in your presence?

A. He did.

Q. Was the statement read to him before he signed it?

A. Yes, sir, it was.

Q. Was the question asked him whether or not he understood the statement?

A. Yes, sir.

[fol. 127] A. Yes, sir.

Q. And how did he answer?

A. Yes.

Q. I believe that's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Mr. Gilfoy, isn't it a fact that they took this boy to the Highway Patrol down there and put him on the lie detector?

A. Yes, sir.

Q. Now, when he got off there, isn't it a fact that our good sheriff here told him that the instrument showed he was a liar?

A. Didn't hear that.

Q. Well, if our good sheriff says that he told him that he was lying and he had better confess to this crime, then you would say he said so, wouldn't you?

A. Yes, sir, if he said he did, I would, but I wasn't present when he . . . .

Q. You weren't present when he told him that?

A. No, sir.

Q. That's all.

BY THE COURT:

All right.

REDIRECT EXAMINATION

BY MR. WALLER:

Mr. Greaves, I want to ask him one other question.

Q. Mr. Richardson of the highway department and [fol. 128] yourself and Mr. Sam Ivy and Mr. Charley Snodgrass and Mr. Billy Noble, the five of you were present in the room?

A. Yes, sir.

Q. Do you recall whether or not any one else was present at the time and place he made the confession?

A. Is Mr. Richardson the young man who took the statement?

Q. Yes, sir.

A. That's all I know of.

Q. All right. Thank you, Sheriff. You may stand aside, Sheriff.

OFFER OF CONFESSION IN EVIDENCE AND ADMISSION THEREOF

BY MR. WALLER:

The State now offers the statement in evidence.

BY THE COURT:

Do you object to it?

BY MR. GREAVES:

Absolutely.

BY THE COURT:

Let the record show, Mrs. Welborn, that before the Court admitted or passed on the alleged confession that the Court carefully read the statement and after having observed that Mr. Gilfoy's name was on there, Mr. Gilfoy being the sheriff of Hinds County, and Mr. Gilfoy not having testified, as is the Court's duty to hear everybody that was present when the question of the admissibility of the confession was raised, did take a recess of about nearly an hour in order for Mr. Gilfoy to come from Jackson. Now, after Mr. Gilfoy having testified and all the rest of the men who were present on the occasion having testified and the Court having heard the Defendant on this one issue and observing him, his de- [fol. 129] meanor and manner, the Court is of the opinion that the confession is legally admissible and so holds and the objection is overruled.

BY THE COURT:

All right, gentlemen, are you ready for the jury to come back now? Are you ready to proceed?

BY MR. WALLER:

Yes, sir.

BY MR. GREAVES:

Note our objection to that.

JURY RETURNED

(By order of the Court the jury returned to the court room and the following proceedings were in the presence of the Court and in the presence of the jury.)

MR. CHARLES SNODGRASS

having been previously sworn, was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. Mr. Snodgrass, were you present and assisting Sheriff Noble in the investigation on Sunday, July the 30th, in the presence of the Defendant, William Smith?

A. Yes, sir.

Q. I ask you whether or not William Smith made any statement with reference to his guilt or innocence in this alleged rape?

A. Yes, sir, he did.

Q. Were you present at the time he made those [fol. 130] statements?

A. Yes, sir.

Q. I ask you what promises of reward or threats of violence were made against him or in his presence prior to the time that he made that statement?

A. There were no threats made.

Q. What further advice, if any, was he given in your presence?

A. He was told that he had the right to have an attorney present.

Q. What use, if any, was he advised that any statement that he might make would be put to?

A. He was advised that any statement he made could be used against him in a court of law.

Q. Were you present—did he make a statement after receiving that advice?

A. Yes, sir.

Q. Was that statement reduced to writing?

A. Yes, sir.

Q. How?
A. Typewriter.
Q. Did you see the statement after it was typed up?
A. Yes, sir.
Q. How many pages is it?
A. Two typewritten pages, single spaced.
Q. Is that the statement which you have in your hand?
A. Yes, sir.
[fol. 131] Q. I ask you whether or not in your presence this statement was read back to the Defendant prior to the time that he signed it?
A. Yes, sir.
Q. What question was asked the Defendant after the statement was read to him?
A. He was asked if the statement was true to the best of his knowledge.
Q. And what did he answer?
A. He answered that it was.
Q. I ask you whether or not he then signed the statement?
A. Yes, sir, he did.

BY MR. GREAVES:

Your Honor, I am going to object to the introduction of it. Just let the record show.

BY THE COURT:

All right. The objection is overruled.

BY MR. WALLER: (continuing)

Q. You were present when he signed it?
A. Yes, sir.
Q. This is the original of the typewritten statement that was made in your presence?
A. Yes, sir.

BY MR. WALLER:

If it please the Court, I offer the statement of William Smith, Jr. into evidence.

[fol. 132] BY THE COURT:

All right. Over objection of Mr. Greaves, representing the Defendant, it may be received as an exhibit.

(Exhibit received in evidence and marked by the court reporter as State Exhibit 7 to the testimony of Witness Snodgrass.)

[fol. 133] BY MR. WALLER:

If it please the Court, I will ask the witness to read the statement to save time, if I may.

BY THE COURT:

Mr. Waller, of course, that's all right. The jury will have that statement. I am going to let you proceed if you want to but don't you think since they will have it they can read it themselves.

BY MR. WALLER:

Just for the record, Your Honor, I would like to ask the witness two or three other questions about the statement.

BY THE COURT:

All right.

BY MR. WALLER:

Q. I ask you whether or not William Smith, Jr. admitted the rape of Aleece Gober in the statement?
A. Yes, sir, he did.
Q. Did he tell you how it happened?
A. Yes, sir.
Q. Did he tell you what weapon, if any, he used?
A. Yes, sir.
Q. All right. Now, did he tell you generally where it happened?
A. Yes, sir.
Q. All right, now, you spoke earlier in your testimony about recovering a pair of under pants that was the property of the victim, Aleece Gober?
A. Yes, sir.

[fol. 134] Q. Did he point out to you the place where you found those under pants as being the place where the rape took place?

A. No, sir, he didn't point the place out.

Q. Did he tell you where it was?

A. Yes, sir.

Q. Now, after he had signed this statement, I will ask you whether—what happened then in the presence of the Defendant in the further investigation of this case?

A. After he signed the statement he was brought back to Canton, Mississippi, and carried to the sawmill quarters in Canton where he lived and the knife . . . .

Q. Just a minute, Mr. Snodgrass. I will ask you what, if anything, he told you in reference to the knife he used?

A. He told us where the knife could be located.

BY MR. GREAVES:

Your Honor, again I object on the ground that I still maintain that the confession was utterly worthless and that any information received therefrom is still worthless.

BY THE COURT:

All right. You may make your point in the record. The objection is overruled. The Court is allowing it to go in. The objection is overruled.

A. He told us where the knife and the watch could be found.

Q. Did he describe the knife to you before you got to his house?

[fol. 135] A. Yes, sir.

Q. Was this act on his part voluntary or did you all force him to do it?

A. Voluntary.

Q. Did he describe—I hand you State Exhibit number 2 For Identification and ask you if generally he described that knife before you got to his house?

A. Yes, sir.

Q. All right. Did you have a search warrant to search his house.

A. The sheriff got a search warrant, yes, sir.

Q. Was he present when you recovered the knife from the wall of his home as you have already testified?

A. Yes, sir.

Q. And did he tell you where he put the knife—how he got it in the wall?

A. Yes, sir.

Q. How?

A. Through a knot hole in the partition wall.

Q. After you got your hands on that knife, what questions, if any, did you ask him?

A. Asked him if that was the knife he told us about.

Q. What did he say?

A. He said it was.

BY MR. WALLER:

If it please the Court, I offer this knife into evidence.

BY THE COURT:

All right. It may be received.

[fol. 136] (Exhibit received in evidence and marked by the court reporter as State Exhibit 2 to the testimony of Witness Snodgrass.)

[fol. 137] BY MR. WALLER:

Q. You had other information at that time, description-wise as to other property I believe you testified to. Is that right?

A. Yes, sir.

Q. What?

A. A watch.

Q. What kind of a watch?

A. It was a Timex watch.

Q. Was that description given to you by the Defendant voluntarily?

A. Yes, sir.

Q. I ask you whether or not you recovered the watch, if so, where?

A. The watch was recovered from his house.

BY MR. GREAVES:

Your Honor, again I object to this. In the beginning here it was just merely for identification. I was objecting to it then but it was just for identification. Again I object to it on the ground that the information that he received by this watch from the confession is void. The confession itself is worthless. Please note that.

BY THE COURT:

All right. Overrule the objection.

BY MR. WALLER: (continuing)

Q. Did you recover a watch?
A. Yes, sir.
Q. And the watch we have discussed before is State [fol. 138] Exhibit 1 for identification to your testimony. Is that the watch that you recovered?
A. Yes, sir.
Q. Was the Defendant present at his house at the time you recovered the watch?
A. Yes, sir.
Q. I ask you whether or not you asked him any questions about the watch after you got your hands on it?
A. I asked him if this was the watch that he had told me about and he stated that it was.

BY MR. WALLER:

We are going to pass this for the time being.

BY THE COURT:

All right.

BY MR. WALLER:

Q. Now, do you know—did the Defendant tell you what kind of pants he was wearing at the time this altercation took place?
A. Yes, sir.
Q. What kind?
A. Khaki.
Q. All right. In his presence, at his house, I will ask you whether or not he made any voluntary declaration

in reference to the pants he was wearing the preceding night when this thing took place?

A. Yes, sir.

Q. Did he identify and recover in your presence and in his presence the pants that he wore?

[fol. 139] A. Yes, sir.

Q. I will ask you whether or not those are the same pants we referred to earlier in your testimony which are now marked For Identification, State Exhibit 5 to your testimony?

A. Yes, sir.

Q. I would like to ask you to open that bag and pull those pants out and tell me whether or not they are in the same condition now as they were when you recovered them? That's the FBI seal that you are tearing on that envelope, is it not?

A. Yes, sir.

Q. Do you have your mark on them?

A. Yes, sir.

Q. Those—I don't want to lead you now, but just tell the jury, you took the pants in your possession, just for the record, and tell them where they have been since that time.

A. The pants were taken by me and sealed and sent to the FBI laboratory.

Q. And returned by whom to whom?

A. Returned from the FBI laboratory to me by registered mail.

Q. And you opened the box here in the court room this morning. Is that the way they were returned to you?

A. Yes, sir.

Q. And you can testify as a matter of fact that their condition now is relatively the same?

A. Yes, sir.

Q. I will ask you what questions you asked the De-

[fol. 140] fendant about these pants after he gave them to you or pointed them out to you at his house there on the afternoon of July the 30th?

A. I asked him if these were the pants he wore on the preceding night and he stated that they were.

BY MR. WALLER:

If it please the Court, I offer these pants into evidence.

BY THE COURT:

All right. They may be received.

(Exhibit received in evidence and marked by the court reporter as State Exhibit 5 to the testimony of Witness Snodgrass.)

[fol. 141] BY MR. WALLER:

Q. I want to ask you about this blouse and shorts. The Blouse is marked State Exhibit 4 For Identification and the shorts are marked State Exhibit 6 for Identification. I ask you from whom did you obtain possession of these, what officer gave you these two garments?

A. No officer. Aleece Gober gave them to me.

Q. All right. They came off of her?

A. From her, yes, sir.

Q. They are in a sealed envelope, the same as the pants?

A. Yes, sir.

Q. I believe that's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Mr. Snodgrass, you tell the jury that you and our sheriff and the other officers treated this man just as gently as if he were a lamb?

A. We treated him as we treat any other prisoner, sir.

Q. Isn't it a fact, Mr. Snodgrass, when you had him down there you told him that if he didn't confess to this crime you would bring him back here to Canton and put him in the county jail and let a mob have him?

A. No, sir, that's not true.

Q. That's not true. That's all.

BY MR. WALLER:

You wait outside, Mr. Snodgrass.

[fol. 142] MR. BILLY NOBLE

having been previously sworn, was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. Did you—the night at Mr. Craft's house you testified that you talked to Aleece Gober?

A. Yes, sir.

Q. What type of clothes did she have on?

A. She had on a white blouse and a pair of dark blue shorts.

Q. I hand you a blouse and ask you whether or not that is the blouse she had on that night?

A. Yes, sir.

Q. All right. Did it have a collar on it or not?

A. The collar had been torn off.

Q. The collar had been torn off?

A. Yes, sir.

BY MR. WALLER:

If it please the Court, I offer this blouse belonging to Miss Gober into evidence.

BY THE COURT:

All right.

(Exhibit received in evidence and marked by the court reporter as State Exhibit 1 to the testimony of Witness Noble.)

[fol. 143] BY MR. WALLER:

Q. You were present when that blouse was recovered from Miss Gober?

A. Yes, sir, it was given to Mr. Snodgrass by Miss Gober—and myself.

Q. Were you present when she gave you the shorts?

A. Yes, sir.

Q. All right. I hand you a pair of dark colored shorts and ask you if those are the shorts that the victim was wearing the night that you talked to her?

BY MR. GREAVES:

Your Honor, I object to that. He doesn't know whose shorts those are.

A. These are the shorts she had on in my presence when I went to the scene and talked to her on the night of the crime.

BY THE COURT:

I think that's all right, Mr. Greaves. I overrule the objection.

BY MR. WALLER: (continuing)

Q. They were handed over in your presence by Miss Aleece Gober?

A. Yes, sir.

BY MR. WALLER:

If it please the Court, I offer these shorts into evidence.

(Exhibit received in evidence and marked State Exhibit 2 to the testimony of Witness Noble.)

[fol. 144] BY MR. WALLER:

Your witness.

CROSS EXAMINATION

BY MR. GREAVES:

Q. I believe after you got the Defendant in your custody you carried him to the Highway Patrol down to Jackson?

A. Yes, sir.

Q. And down there you put him on the lie detector down there?

A. Yes, sir.

Q. Isn't it a fact that you told the Defendant that the detector showed that he was lying?

A. After . . . .

Q. That he might just as well confess to the crime?

A. After I conferred with Mr. Sam Ivy, he told me of his findings on the polygraph machine I made that statement to him.

Q. You made that statement to him that he might just as well tell the truth?

A. Yes, sir.

Q. That's all.

BY MR. WALLER:

Stand aside, Billy.

JAMES MYERS

having been previously sworn, was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

[fol. 145] Q. You are the same James Myers who testified in this case earlier today?

A. Yes, sir.

Q. You testified, James, that the Defendant took a Timex wrist watch off of you?

A. Yes, sir.

Q. The night that this happened. I hand you State Exhibit 1 to the testimony of Mr. Snodgrass and ask you to examine that watch. Is that your watch?

A. Yes, sir.

Q. Is this the watch that you had on that the Defendant took off of you the night that this happened?

A. Yes, sir.

Q. Have you seen it since he took it?

A. Mr. Snodgrass brought it out to the house and showed it to me.

Q. Did you identify it then?

A. Yes, sir.

MR. WALLER:

If it please the Court, I offer the watch into evidence, as an exhibit to this witness's testimony.

BY THE COURT:

All right. It may be received.

(Exhibit received in evidence and marked by the court reporter as State Exhibit 1 to the testimony of Witness Myers.)

[fol. 146] CROSS EXAMINATION

BY MR. GREAVES:

Q. Mr. Myers, how can you identify that watch as being your property?

A. Well, this same band wasn't on there when I bought it. That's a new band on it. And it wasn't broken—either one.

Q. Just by the band on there now is not the band on there the night it was taken away from you?

A. Yes, sir, that's the same band that was on there.

Q. This same band was on there the night you say it was taken away from you?

A. Yes, sir.

Q. Now, isn't it a fact, that thousands and thousands of watches are exactly like that and with the same bands on it in this country?

A. Not where I bought that one, sir.

Q. I asked you, isn't it a fact, there are hundreds of watches like that and watches with the same band on it. If you put another beside it like that, you couldn't tell one from another, could you?

A. Yes, sir, I could.

Q. How could you tell?

A. Because on the front of it. Right down there at one hundred it has got a black dot.

Q. It's got a black dot but don't the rest of them—a lot of them have a black dot?

[fol. 147] A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. How are you sure of that?

A. (No answer)

Q. Did you put it on there?

A. No, sir, I didn't. Mr. Edmonds said it was made on there like that.

Q. Made on there. There are hundreds of them that got the same dot, the same marking. You are positive, though, that's your watch?

A. Yes, sir.

Q. That's all.

REDIRECT EXAMINATION

BY MR. WALLER:

Q. James, for the record, you bought the watch with another band on it. Is that correct?

A. Yes sir.

Q. Then, as I understand your testimony, you bought this band and put it on your watch after you bought the watch?

A. Yes, sir.

Q. You had this band and this watch on the night that you were robbed?

A. Yes, sir.

Q. That's all.

ANTHONY O'TOUSA

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

[fol. 148] DIRECT EXAMINATION

BY MR. WALLER:

Q. You are Anthony O'Tousa of Washington, D.C.?

A. Yes, sir.

Q. By whom are you employed, Mr. O'Tousa?

A. I am currently employed by the Federal Bureau of Investigation in Washington, at the FBI laboratory.

Q. How old are you, sir?

A. Thirty five years old.

Q. How long have you been employed by the Federal Bureau of Investigation?

A. Seven years.

Q. Prior to becoming employed by the FBI—that's permissible to say FBI, isn't it.

A. Yes, sir.

Q. What formal education or training did you received that lead you into your work with the FBI?

A. I am a graduate of the University of California, Los Angeles, where I took a baccalaureate degree in the field of biology and the related field of chemistry.

Q. That was a four year college course, was it not?

A. Yes, sir.

Q. After you became associated with the FBI seven years ago, what field of work have you followed?

A. I have been assigned to the FBI Laboratory where I make examinations relating to evidence concerning hairs and fibers.

Q. Have you received any further specialized training in the scientific field since you have been with the FBI? [fol. 149] A. Yes, sir, for a period of one year I underwent a period of training under qualified examiners until such time as I was able to conduct independent examinations.

Q. In your work from day to day or week to week in Washington with the FBI, what type of examinations do you make on clothes for foreign matter, if any?

A. I devote my full time to the examination of clothing for the hairs and fibers evidence.

Q. After you recover a foreign object or objects on clothing, what procedure do you follow to further analyze that body or object.

A. My work entails the identification of the object and then the comparison of that object with the known object.

Q. In other words that is done how, with what device or instrument?

A. By the use of the microscope.

Q. You use colors and textures and all sorts of devices?

A. The hair examination it's a matter of first identifying the hair with the use of the research microscope. Then the comparison is made by use of the comparison microscope which is two research microscopes mounted with a common eye piece so that you can view each object simultaneously.

Q. Do you devote your entire time to this field of scientific work?

A. Yes, I do.

Q. I ask you whether or not you are called upon to testify in various courts about the country as an expert in this field?

[fol. 150] A. Yes, sir; I am.

Q. All right. Are you recognized in all courts where you have appeared as an expert in your field?

A. I am.

Q. I ask you whether or not you received certain evidence at your office in Washington from Officer Charles Snodgrass of the Mississippi Highway Safety Patrol relating to a suspect named William Smith, Jr?

A. Yes, sir, I did.

Q. In particular, sir, what objects or garments did you examine?

A. I examined the trousers of William Smith.

Q. I hand you a pair of pants that's marked State Exhibit 5 to the testimony of Officer Snodgrass and ask you to look at them and tell the jury whether or not those are the pants which you examined?

A. Yes, sir, these are the pants that I examined. They bear my identifying mark on the waist band.

Q. For the benefit of the jury, could you give them the date that you made your examination?

A. Yes. I made my examination on August the 3rd, 1961.

Q. On August the 3rd, 1961?

A. Yes, sir.

Q. What did you recover, from the pants, if anything?

A. In making my examination I recovered a single light brown pubic hair of Caucausian origin which had become caught in the zipper of these trousers.

[fol. 151] Q. All right. Would you stand up, sir, and face the jury? Hold the pants in front of you and show the jury where this hair was.

A. The hair was caught in the zipper slide right in that position there (pointing). When I received the trousers the zipper was down and the hair was caught in that particular location. I removed that hair and I placed it on the glass microscope slide for examination.

Q. Now, do you have that slide with you?

A. Yes, sir, I believe it's in the box. (looking)

Q. All right, sir, you may go ahead and look for it.

A. This is the slide containing the slight brown pubic hair Caucasian origin which I removed from this pair of trousers.

Q. Let me ask you to definite two words now, just to be sure that I understand you. The word "Caucasian" means white?

A. Yes, sir.

Q. American. And the word "pubic" means what?

A. From the pubic area, from the crouch area of the individual.

Q. It's what color?

A. Light brown.

Q. All right. Now, proceed, sir

A. Upon continuing with the examination, as I explained before, I examined this particular hair under the research microscope. Then I made a comparison of this particular hair with known hairs from the pubic area of Aleece Gober and in making this comparison that this [fol. 152] particular hair, this light brown public hair of Caucasian origin matched the microscopic characteristic of the known pubic hairs from Miss Gober and I then concluded that this light brown pubic hair of Caucasian origin either originated from Aleece Gober or from an individual whose public hairs would possess the same individual microscopic characteristics.

Q. Microscopic characteristics of the hair are what?

A. Would you like for me to give a run down on the miscrospic characteristics of hair?

Q. Yes, sir.

Q. Let's suppose that you were to take the common ordinary pencil in explaining microscopic characteristics, you would have the outer portion of the pencil would refer to the cuticle of the hair. Beneath the cuticle of the hair you have a structure known as the medulla of the hair. The lead portion of the pencil, the innermost portion, would refer to the cortex of the hair. Now, it is the individual microscopic characteristics of these particular hair layer structures that we are concerned with in our comparison. In this particular case, the light brown Caucasian pubic hair, the individual structures, that is, the formation of the cortex, the structures in the medulla which contain the pigmentations which impart the color of the hair matched, were identical, as the known pubic hairs from Miss Gober.

Q. I ask you whether or not microscopically according to your study you can distinguish between a negroid hair and caucasian hair?

[fol. 153] A. Yes, sir, it is definitely possible to differentiate between the three major races. That, too, depends on the individual microscopic characteristics. In this case, the very fine even distribution of the pigment, the very light color to the pigment, the very fine structure of the hair itself, the very evenness of the calibre of the hair shaft are all indications of a Caucasoid or Caucasian type hair.

Q. As an expert based upon your examination, you would say that the hair you took from the zipper of William's Smith's pants was definitely a white hair. Is that correct?

A. Definitely from an individual of the white race.

Q. ~~In the comparison that you might with the hair that~~ — let me ask you this. (Strike that and take this) You have a hair in that slide, do you not?

A. That's right. That's the known slide there of the . . . .

Q. Of Aleece Gober?

A. Right.

Q. There's a hair in there or some strands of hair?

A. Yes, sir.

Q. Now, how many times approximately, just for the benefit of myself and the jury, how many times did you magnify this hair to pick up all those characteristics that you spoke of?

A. That was magnified approximately one hundred diameters.

Q. One hundred times?

A. That's right, one hundred times.

[fol. 154] Q. The size?

A. That's right.

Q. And this hair that you recovered from the zipper and you found the two hair characteristics or the characteristics of the two hairs very similar. Is that correct?

A. That's correct. I found the same microscopic characteristics in each of the hairs.

Q. You found the same color?

A. That's correct.

Q. You found the same pigmentation, you might say racial or velocity . . . .

A. The same diffuse evenness of the pigmentation, yes, sir.

Q. Yes, sir. Then in your opinion as an expert, I will ask you whether or not the hair—the hairs which you took out of the zipper of William Smith's pants and Aleece Gober's hair are the same hair?

A. As I stated, the hair that I removed from the zipper of the trousers could have come from Aleece Gober. Due to the fact that hairs possess limited characteristics for comparison, it is not possible to state that a hair positively originated from a particular source. The most that we can say is that the hairs possess similar microscopic characteristics. That they originated either from a particular person or from another individual who has the same particular microscopic characteristics in his hair.

Q. All right. I want to ask you some negative propositions. I ask you, the hair that came out of the zipper [fol. 155] did not come from a negro man or a negro woman.

A. That's true. It did not come from a negro.

Q. You say that as a matter of expert knowledge.

A. That is a matter of my knowledge, yes, sir.

Q. And you will say that the hair that you recovered is the same color and texture as the hair, the known hair of Aleece Gober?

A. Yes, sir.

Q. That's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. That hair from the zipper and the hair from Aleece Gober you say have a similarity. Is that it, sir?

A. I say that they possess the same microscopic characteristics, yes, sir.

Q. Characteristics?

A. That's right, sir.

Q. The hair that came out of the zipper could belong to any other woman besides Miss Gober having the same characteristics. Is that it?

A. If the other woman had the same characteristics, yes. It would come from another woman who came in contact with those trousers. It would have to come from one other woman with the same characteristics, yes, sir.

Q. Then you will not tell this jury that the hair found in the britches there was Miss Gober's hair?

A. No, sir, it is not possible to state positively.

Q. I see. That's all.

[fol. 156] BY MR. WALLER:

You are free to leave. Thank you, sir.

A. You are welcome.

(Witness excused)

(Witness recalled)

BY MR. WALLER:

I offer these two slides in evidence, if the Court please.

BY THE COURT:

All right.

(Exhibits received in evidence and marked as State Exhibit 1 and State Exhibit 2 to the testimony of Witness O'Tousa.)

[fol. 157] (Witness excused)

JAMES MATLOCK

after having been duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. What is your name?

A. James Matlock.

Q. M-a-t-l-o-c-k (spelling)?

A. Yes, sir.

Q. James, I am going to have to hear you back here. Can you speak up?
A. Yes, sir.

BY THE COURT:

What did he say his name was?

BY MR. WALLER:

Matlock. M-a-t-l-o-c-k (spelling)

BY THE COURT:

All right. Speak out, James, so all of us can hear you.
A. Yes, sir.

BY MR. WALLER:

Q. Where do you live, James?
A. Mr. A. B. Mansel's place.
Q. Where does Mr. A. B. Mansel live?
A. Where he lives at?
Q. Yes.
A. Well, you go to 51 and your turn back off to your right out there.
[fol. 158] Q. North of Canton, off to the east of 51 highway?
A. Yes, sir.
Q. Do you know where the Finney Road is?
A. Yes, sir.
Q. Do you know what you were doing on Saturday night, July 29th, 1961?
A. Yes, sir.
Q. What?
A. July 29th.
Q. What?
A. On Friday night?
Q. That was on Saturday night.
A. Yes, sir. On that Saturday night I was—I left out of the oil mill quarters about 11 o'clock.

BY THE COURT:

Speak a little slower, James, because we are having a little trouble hearing you.
A. Yes, sir.

BY MR. WALLER:

Q. Were you riding or walking?
A. Riding.
Q. Were you driving or riding?
A. Sir?
Q. Were you driving a car?
A. Yes, sir.
Q. Whose car?
A. Driving my daddy's car.
Q. Driving your daddy's car?
[fol. 159] A. Yes, sir.
Q. Who was in the car with you?
A. Me and William Smith and Garrison and Richard Leonard.
Q. You and William Smith and who?
A. Richard Leonard.
Q. Richard who?
A. Richard Leonard.
Q. Richard Nunnery?
A. Richard Leonard.
Q. Donald?
A. Richard Leonard.
Q. And who else?
A. That was all.
Q. What?
A. That was all in the car with me.
Q. But you didn't know him?
A. That was all that was in the car with me.
Q. Those were the only ones?
A. Yes, sir.
Q. You left out of the oil mill quarters?
A. Out of the oil mill quarters, yes, sir.
Q. Where did you go?
A. Went over to O. T.'s house. O. T. Griffin's house, out there on Mr. Tony James' place.
Q. What did you do when you got there?
A. I got there and Richard Leonard got out of the car.
[fol. 160] Q. Wait a minute. Start over again.
A. We got out there and Richard Leonard got out of

the car. That was one of the boys who was in the car with me.

Q. All right. This third boy got out of the car and left you and . . . .

A. No, sir, the second boy. After we got down there two got out.

Q. Who got out now?

A. Richard Leonard and my daddy, Eicie Matlock.

Q. That's E-i-c-i-e (spelling)?

A. Yes, sir, that's the way he spells it.

Q. They got out of the car?

A. Yes, sir.

Q. That left who in the car?

A. That left me and William Smith.

Q. All right. What do you call William?

A. Sir?

Q. What do you call William?

A. Soo Cow.

Q. Soo Cow?

Q. Do you see him in the court room?

A. Yes, sir, I saw him here today.

A. Yes, sir.

Q. Do you see him sitting over there?

A. Yes, sir, I see him over there.

Q. Is that him?

A. Yes, sir.

Q. It was about 11 o'clock Saturday night?

[fol. 161] A. Yes, sir.

Q. All right. What happened then?

A. After that me and him left coming on back down the road. We was about to get to Mr. Tony James' house . . . . .

Q. Wait a minute. You all left and came on back down the road?

A. Down the road, yes, sir.

Q. Which way did you come?

A. Come to the highway, 51 highway.

Q. What road were you on?

A. Finney Road.

Q. On the Finney Road?

A. Yes, sir.

Q. Do you know where Mr. Ernest Craft lives?

A. Yes, sir, I know where he lives at.

Q. Do you know what direction Finney Road runs in, north or south or east or west?

A. It was running—going north. It's a little gravel road.

Q. Wait a minute now.

A. Sir?

Q. You were coming back on to highway 51 on Finney Road?

A. Yes, sir, Finney Road.

Q. Is Mr. Craft's house between you and the highway?

A. Between me and the highway?

Q. At that time? You and William Smith were riding along in the car.

[fol. 162] A. Yes, sir. Mr. Craft's house was betwist us.

Q. Betwist you and the highway?

A. Yes, sir.

Q. So you are east of Mr. Craft's house—do you agree with that?

A. East?

Q. Yes.

A. Yes, sir.

Q. You were driving the car?

A. Yes, sir, I was driving the car.

Q. Some time after 11 o'clock?

A. Yes, sir, after 11 o'clock.

Q. What did William Smith say to you, if anything?

A. Coming on back, he was telling me he was going to get some money.

Q. Wait a minute. Coming on back he said what?

A. He was supposed to have some money. He was going to get some money.

Q. He was going to get some money?

A. He had to have some money but who he was talking about I didn't know.

Q. Say that again.

A. He said he was supposed to have some money. He was going to get the money from—I don't know who he was going to get the money from.

Q. You said you was supposed to have some money?

A. No, sir. Said he had some money—he was going to get it and we would divide it.

[fol. 163] Q. He didn't have any money but if he could get some you all would divide it?

A. Yes, sir, that's what he said.

Q. All right. Do you know where he intended to get the money from?

A. No, sir, I don't know where he intended to get the money from.

Q. Did he get out of the car?

A. Yes, sir, he got out of the car.

Q. You know where Mr. Ernest Craft's place is?

A. Yes, sir.

Q. Were you on Finney Road when he got out of the car?

A. Yes, sir, on Finney Road.

Q. Was Mr. Craft's house between you and the highway when he got out of the car?

A. He got out of the car down below Mr. Tony James. Mr. Craft's house is up on the hill there.

Q. Mr. Craft's house is up on the hill?

A. Yes, sir.

Q. Where he got out of the car?

A. Yes, sir.

Q. Do you know where Mr. Grady Morgan's dairy farm is?

A. Yes, sir, I know where that is.

Q. Is that a gravel road or a paved road that runs by there?

A. That's a gravel road that runs through there.

[fol. 164] Q. Where does that gravel road run into the Finney Road?

A. Around there—I don't know where it run out at. We was on this Finney Road, the road you turn off the right on this gravel road.

Q. The gravel road that goes in the front of Mr. Grady Morgan's house runs off the Finney Road.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. All right. Were you anywhere close to that gravel road that runs north by Mr. Grady Morgan's house when he got out of the car?

A. Yes, sir.

Q. You were close to that road?
A. Yes, sir, we was close to that road.
Q. After 11 o'clock?
A. Yes, sir, after 11 o'clock.
Q. What was the last thing he said to you when he got out?
A. When he got out?
Q. Yes.
A. When he got out he said he was supposed to have some money. He was going to get the money and divide it.
Q. He said he was going after some money?
A. He said he was going to get it and divide it. He didn't say where he was going to get it at.
Q. Let me get this right. He said, "I don't have [fol. 165] any money."
A. No, sir.
Q. "I am going to get some money."
A. No, sir, didn't say that.
Q. All right. What did he say?
A. He said, "If these folks have any money, I am going to get the money and divide it."
Q. If these folks have any money, I am going to get their money . . . . . .
A. Yes, sir.
Q. . . . . and divide it with you?
A. Yes, sir, that's what he said.
Q. All right. Who were these folks?
A. I don't know who the folks was.
Q. Did you see any other cars around there?
A. When we started going to O. T.'s house I saw a car on this gravel road, right off the Finney Road, this gravel road.
Q. You saw a car up the gravel road?
A. Yes, sir.
Q. That runs off the Finney Road?
A. Yes, sir, off the Finney Road.
Q. Do you know what kind of car it was?
A. No, sir, I don't know what kind of car it was.
Q. Do you know who was in it?
A. No, sir, I don't know who was in it.

Q. That's all he said when he left?
A. That's all he said.
[fol. 166] Q. If these folks have any money I am going to get it and divide it with you?
A. Yes, sir, that's what he said.
Q. Did you have your lights on or off?
A. Off.
Q. Had them on?
A. Off.
Q. Did you wait for him?
A. I waited about five minutes. I didn't tell him I was going to wait any time or not. I waited about five minutes.
Q. You waited about five minutes?
A. Yes, sir.
Q. Then what did you do?
A. I went back and got my daddy and Richard Leonard.
Q. You went back out there and got your daddy?
A. And Richard Leonard.
Q. Weren't you supposed to wait for William Smith?
A. He didn't tell me to wait.
Q. You didn't wait?
A. I waited, sir, about five minutes then I went back over there and got my daddy and Richard.
Q. Went back and got your daddy and Richard?
A. Yes, sir.
Q. Then what did you do?
A. Come home.
Q. Did you see Richard any more that night?
A. Richard?
[fol. 167] Q. I mean William Smith.
A. I didn't see William no more until Sunday morning after I come up to the city jail.
Q. You don't know what William did?
A. I don't know what he did.
Q. But you left?
A. Yes, sir, I left.
Q. That's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. I believe you are indicted with Smith over here for armed robbery, aren't you?

A. Sir?

Q. Aren't you indicted for armed robbery?

A. That's what they say.

Q. So they say?

A. Sir?

Q. I said, you said they say you are indicted for armed robbery?

A. Yes, sir.

Q. And isn't it a fact that you have been used here as a witness in this case against this man because you have been promised if you would get here and tell things you would be given a lighter sentence?

A. Sir?

Q. Ain't that right?

A. Sir?

Q. Haven't you been promised for your testimony [fol. 168] here against this man, haven't you been promised that you wouldn't be put in the electric chair, I mean the gas chamber for it?

A. Say that again.

Q. I say, for your testimony here against this man haven't you been promised if you testify against him you wouldn't received a bad sentence?

A. (No answer)

Q. Isn't that true?

A. Yes, sir.

Q. That's all.

REDIRECT EXAMINATION

BY MR. WALLER:

Q. Matlock . . .

A. Sir?

Q. Have I promised you anything if you would get on the witness stand and testify?

A. No, sir, you haven't.

Q. Has Mr. Fancher promised you anything?
A. No, sir.
Q. Well, who's promised you something?
A. Ain't nobody promised me nothing.
Q. Did you understand what Mr. Greaves said?
A. No, sir, I couldn't understand him.
Q. Mr. McCool there is your lawyer, isn't he?
A. Yes, sir.
Q. Nobody has promised you anything to get up here and tell the truth, have they?
A. Tell the truth?
[fol. 169] Q. Have I promised you anything?
A. Ain't nobody promised me—you ask for the truth and I told you the truth.
Q. Didn't I tell you to get up here and tell the truth?
A. Tell the truth, no, sir.
Q. Are you telling the truth?
A. I am telling the truth.
Q. Has Mr. Fancher promised you anything . . . . .
A. No, sir.
Q. . . . . if you will testify in this case?
A. No, sir.
Q. You now say that nobody has promised you anything? Is that righ ?
A. Yes, sir.
Q. You understand what I am talking about?
A. Yes, sir, I understand what you are talking about now.
Q. You are in jail, aren't you?
A. Yes, sir, I am in jail.

RECROSS EXAMINATION

BY MR. GREAVES:

Q. In fact, you don't know what you are testifying to, do you?
A. That's right.
Q. In other words, you haven't got sense enough to testify, have you?
A. (No answer)

[fol. 170] BY THE COURT:

Let's have order.

BY MR. WALLER:

You can go on back there.

BY THE COURT:

All right. Who do you want, Mr. Waller?

BY MR. WALLER:

Allece Gober.

(The court room was again cleared in the same way it previously was cleared when this witness testified.)

ALEECE GOBER

having been previously sworn, was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are the same Aleece Gober that testified earlier in this case?

A. Yes, sir.

Q. I hand you a pair of lady's shorts marked Exhibit 2 to the testimony of Sheriff Noble and ask you whether or not these are the shorts you had on the night that this took place?

A. Yes, sir.

Q. Are those you spoke of as taking off in the corn field and putting back on again?

A. Yes, sir.

Q. You stated that night you had on a white blouse that you tore the collar off to bandage your wound . . . .

A. Yes, sir.

[fol. 171] Q. Wait just a minute, let me get it in the record. I hand you State Exhibit 1 to the testimony of Witness Noble and ask you if that is the blouse?

A. Yes, sir.

Q. Now, what color is your hair?
A. Brown.
Q. Is it light brown?
A. Yes, sir.
Q. Do you know what public hairs are, honey?
A. (No answer)
Q. Hairs that grow around the crotch?
A. Yes, sir.
Q. Are you aware of that?
A. Yes, sir.
Q. Did you give any of your public hairs to Mr. Charley Snodgrass?
A. Yes, sir.
Q. I will ask you for the record, what color your public hairs are?
A. Brown.
Q. Light brown?
A. Yes, sir.
Q. All right. That's all.

BY MR. GREAVES:

I don't care about asking anything.

BY THE COURT:

All right.

MR. CHARLES SNODGRASS

having been previously sworn, was recalled as a witness [fol. 172] by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are the same Mr. Charles Snodgrass that has testified previously in this case?
A. Yes, sir.
Q. I will ask you whether or not you obtained some pubic hair specimens from the victim, Miss Aleece Gober?
A. Yes, sir.

Q. I will ask you what you did with it, if anything?
A. It was carried to headquarters, sealed, and sent off to the FBI Laboratory in Washington.
Q. And came back along with the other evidence that was returned from the FBI laboratory?
A. Yes, sir.
Q. That's all.

BY THE COURT:

All right, gentlemen, what do you say?.

BY MR. WALLER:

The State rests, Your Honor.

(The State of Mississippi rests)

BY MR. GREAVES:

I am going to rest, Your Honor.

BY THE COURT:

All right.

(The Defendant rests)

(This was all the evidence offered in this case.)

[fol. 173] COURT REPORTER'S CERTIFICATE
(omitted in printing)

[fol. 174] CLERK'S CERTIFICATE
(omitted in printing)

[fol. 175] IN THE
SUPREME COURT OF MISSISSIPPI

No. 42,222

WILLIAM SMITH, JR.

v.

STATE OF MISSISSIPPI

OPINION—April 9, 1962

GILESPIE, JUSTICE:

William Smith, Jr., was indicted, tried and convicted of the crime of rape. The death penalty was imposed.

At about midnight on July 29, 1961, a seventeen year old boy and a fourteen year old girl were parked on a gravel road north of Canton. Appellant was riding in an automobile driven by James Matlock. When they got near the car where the young people were parked, appellant told Matlock that he was going to get some money and divide it with Matlock. Matlock stopped the car and appellant got out. When appellant did not return in about five minutes, Matlock left. Appellant went to the automobile where the young people were parked and reached in the car and placed a knife across the throat of the young man. He robbed the young man, then forced him and the young lady into a cornfield where at the point of a knife he forceably raped the young lady.

Appellant was arrested some three or four hours after the commission of the crime and placed in jail at Canton, and after a few hours was removed to the Highway Patrol [fol. 176] office near Jackson where he confessed. There can be no doubt whatsoever about appellant's guilt. The proof was overwhelming and appellant's confession was corroborated in many respects.

The only question raised is whether the confession was voluntary. The proof showed that appellant was arrested about four o'clock A.M., on Sunday, July 30, 1961, and

he confessed about twelve hours later. There were five officers present when he confessed and each one of them testified that appellant was not mistreated in any way whatsoever, and that appellant was advised he had a right to have a lawyer present and any statement he might make would be used against him in court. The appellant took the stand in the absence of the jury on the preliminary hearing to determine the admissibility of the confession and testified he signed the confession because the officers threatened to bring him back to Canton and put him in the county jail and have a mob get him. He also said that he had taken a lie test on the machine (meaning polygraph), and the officer told him he was lying. He said the confession was not of his own free will but was made through fright and fear of being mobbed. Every officer present before and after the confession testified and denied making any statement to the effect that appellant would be put in the Madison County jail so that a mob could get him. The lower court found that appellant was not told that a mob would be allowed to get him unless he confessed, and the testimony was overwhelmingly in accord with this finding. The officers admitted that appellant was told the polygraph machine indicated he was not telling the truth. If appellant was afraid, it was not [fol. 177] fear of the machine but its capacity to elicit truth. This fear, therefore, was of the truth and its consequences. Pinter v. State, 203 Miss. 344, 34 So.2d 723. The State did not bring out any of the references to the polygraph machine during the preliminary hearing on the admissibility of the confession. This was developed by appellant's counsel. We find no grounds for holding that the confession was not voluntary.

The crime was an awful and brutal one. The defendant's guilt was proven to a moral certainty. We find no error, and the case is affirmed.

AFFIRMED, AND THURSDAY MAY 17, 1962, IS SET AS THE DAY FOR THE EXECUTION OF THE DEATH SENTENCE.

ALL JUSTICES CONCUR

[fol. 178] IN THE
SUPREME COURT OF MISSISSIPPI

No. 42,222

WILLIAM SMITH, JR.

vs.

STATE OF MISSISSIPPI

JUDGMENT—April 9, 1962

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Madison County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 26th day of September 1961—be and the same is hereby affirmed. It is therefore ordered and adjudged that the appellant, William Smith, Jr., for such his crime of rape, be safely kept by the proper authorities until Thursday, May 17, 1962, and on that date, he, the said William Smith, Jr., be by the duly and legally appointed person for such purpose, put to death in the manner prescribed by statute. And may the Lord have Mercy on his Soul. It is further ordered and adjudged that the County of Madison do pay the costs of this appeal to be taxed.

[fol. 179] IN THE
SUPREME COURT OF MISSISSIPPI

No. 42,222

KYLE, JUSTICE:

ORDER ON MOTION TO SET NEW DATE FOR EXECUTION

The appellant, William Smith, Jr., was indicted, tried and convicted in the Circuit Court of Madison County for the crime of rape. A death penalty was imposed. On appeal to this Court the judgment of the circuit court was affirmed on April 9, 1962, and Thursday, May 17, 1962, was set as the date for the execution of the sentence. William Smith, Jr. v. State (Miss. 1962), 139 So. 2d 857. A suggestion of error filed by the appellant was overruled on May 15, 1962. A petition for an appeal by way of certiorari to the Supreme Court of the United States and for stay of the death sentence pending such appeal was filed by the appellant with the Clerk of this Court on May 22, 1962; and an order was signed by a judge of this Court on May 24, 1962, allowing the appellant 90 days within which to perfect his appeal to the United States Supreme Court, and granting a stay of execution of the death sentence for the purpose of enabling the appellant to perfect said appeal.

[fol. 180] The 90-day period allowed by the order of the judge of this Court for the filing of a petition for certiorari to the Supreme Court expired on August 13, 1962. No petition for certiorari was filed with the Clerk of the Supreme Court within the 90-day period. The appellant, however, filed such petition with the Clerk of the Supreme Court on August 14, 1962, and the case was thereafter docketed as No. 374, Misc. of the October Term 1962. On September 8, 1962, the appellant filed a motion with the Clerk of this Court asking for a further stay of execution of the death sentence, pending action by the Supreme Court on said petition, notwithstanding the fact that the petition had been filed out of time. On Septem-

ber 14, 1962, the State filed its answer to the appellant's motion for a further stay of execution, and also a motion for an order of this Court fixing a new date for the execution of the death sentence. This Court by an order entered upon its minutes on September 24, 1962, overruled the appellant's motion for a further stay of execution. But in view of the filing of the petition for certiorari with the Clerk of the Supreme Court and the docketing of same prior to that date, no action was taken by this Court at that time on the motion of the State for an order fixing a new date for the execution of the death sentence.

It now appears to this Court that, on October 8, 1962, there was filed with the Clerk of this Court a certified copy of an order signed by Associate Justice Hugo L. Black of the Supreme Court of the United States, staying the execution of the death sentence pending the action of the Supreme Court upon the appellant's petition for certiorari. The stay of execution thus granted precludes affirmative action by this Court at this time upon the motion filed by the State asking that a new date be set for the execution of the death sentence.

[fol. 181] It is therefore ordered that the motion of the State for the setting of a new date for the execution be dismissed, without prejudice to the right of the State to file a new motion in the event the appellant's petition for certiorari be denied by the Supreme Court, or, in the event the petition for certiorari be granted and the judgment of this Court be affirmed by the Supreme Court.

MOTION TO SET NEW DATE FOR EXECUTION DISMISSED WITHOUT PREJUDICE.

ALL JUSTICES CONCUR EXCEPT ARRINGTON, J., WHO TOOK NO PART.

[fol. 182] IN THE
SUPREME COURT OF MISSISSIPPI

[Title Omitted]

ORDER GRANTING STAY OF EXECUTION AND OVERRULING SUGGESTION OF ERROR—May 15, 1962

The petitioner having presented to this Court a suggestion of error within the extended time allowed by this Court, and having submitted a petition for stay of execution of the judgment of execution presently scheduled for May 17, 1962.

IT IS HEREBY ORDERED AND ADJUDGED, that a stay of execution of the judgment of execution is hereby granted for a period of 14 days from and after May 17, 1962.

IT IS FURTHER ORDERED AND ADJUDGED, that the Sheriff of Sunflower County, Mississippi, and the Superintendent of the Mississippi Penitentiary, Parchman, Mississippi, be notified of this stay of execution by the Clerk of the Supreme Court of the State of Mississippi; that is to say the execution is not to take place until May 31, 1962.

ORDERED: That the suggestion of error filed herein be and the same is hereby overruled.

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[fol. 183]

Clerk's Certificate [omitted in printing]

[fol. 184]

SUPREME COURT OF THE UNITED STATES

* * * *

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR CERTIORARI—
Dec. 17, 1962

On petition for writ of Certiorari to the Supreme Court of the State of Mississippi.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 667.

December 17, 1962

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